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INVESTIGATION OF SENATOR DAVID F. DURENBERGER

EXHIBITS

BEFORE THE

SELECT COMMITTEE ON ETHICS
UNITED STATES SENATE

ONE HUNDRED FIRST CONGRESS

SECOND SESSION

DURENBERGER HEARING EXHIBITS

PART 7 OF 7

JUNE 12-13, 1990

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VOLUME I

EXHIBITS 1–52

AFFIDAVIT OF WILLIAM B. CANFIELD, III

I, WILLIAM B. CANFIELD, III, being duly sworn, do hereby depose and state as follows:

1. At all times during calendar years 1984, 1985, and 1986 I was employed as counsel on the staff of the Senate Select Committee on Ethics. Respecting this period of time, I have been asked about my recollection of a matter concerning Senator David Durenberger and his writing, publishing, or promoting a book. I recall only two conversations with anyone on this subject.

2. Although I do not recall the exact date, I do recall that at some time during 1985, while Clendon Lee was still employed by the Committee, a conversation took place among Committee staff counsel (there were three of us: me, Clendon Lee, Wilson Abney) on the subject of a book publication and promotion agreement involving Senator David Durenberger. As I recall it, this conversation took place not long before Clendon left the Committee, perhaps as part of the process of dividing his work between Wilson and me. I believe we were being alerted to the matter by Clendon because of the possibility of a follow-up contact. The only information known at the time of this three-way conversation among staff counsel was general, we knew only that the

matter involved an agreement which called for Senator Durenberger to author and promote a book.

3. Several months after Clendon left the Committee (I do not recall the exact date) I received a call from Doug Kelley on the subject of the Senator's contract with his publisher. I recall being informed that this was in most respects a pretty standard book arrangement, with one added feature. That feature called for the Senator to actively promote his book. The Senator was to be compensated for these promotional appearances. This "promotional appearance" feature of the contract raised a question of whether the fees received by the Senator were "honoraria" or a "stipend." My advice to Doug Kelley was that the Senator would want a determination from the Federal Election Commission on this issue, because FEC regulations define "honorarium" and "stipend," and the Ethics Committee had historically followed and considered itself bound by FEC rulings on these "honoraria" issues. Whether Doug Kelley told me the Senator already had an FEC opinion at the time of this conversation, I do not recall.

4. This was not the first book or record royalty contract or stipendiary relationship I had been aware of in the Senate. I recall similar contracts (though not necessarily the identical "appearance" issue) involving Senators Byrd, Dole, Kennedy, Simpson, and Moynihan.

5. I do not recall during the conversation being made aware by Doug Kelley that Senator Durenberger's publisher charged a fee to the groups before whom the Senator appeared to promote his book. Neither do I recall being made aware that the Senator's office referred requests for the Senator's appearance to the book publisher so that a promotional appearance could be arranged. However, I would like to emphasize that in seeking my advice on matters concerning the Code of Official Conduct, Doug Kelley (whom I originally met when he visited the Committee staff shortly after coming to work for the Senate) was always extremely forthright in providing all (not just some) facts considered relevant to the question he was asking. In my opinion, the existence of either of these two facts (fees charged to audiences for appearances, referral of requests for appearances) might raise additional questions for the FEC.

6. I recall having read several Minnesota and Washington, D.C. newspaper accounts discussing Senator Durenberger and his writing, publishing, or promoting books, long after my conversation with Doug Kelley. I cannot say to what extent, if any, my recollection of the two conversations which I have described above may have been refreshed by those articles, but to the best of my knowledge those conversations occurred as stated.

7. In early 1989, I received a telephone call from, and discussed this matter with, Clendon Lee. In January 1989, I also discussed this matter, and several other unrelated matters, with Jim Hamilton. At that time, I related to Mr. Hamilton the same recollection of the two conversations which I have set out above. My recollection of those conversations was not refreshed by my discussion of the matter with either Mr. Hamilton or Mr. Lee.

8. In addition, while watching the coverage of the Democratic National Convention in July, 1988, I specifically recall an interview conducted by ABC TV with the Chairwoman of the Minnesota Democratic State Party about the effect of the Jim Wright ethics inquiry on the Minnesota political scene. Her response was that the Wright matter made it very difficult for her state party to make the charge against Dave Durenberger that his book contract was unethical. I recall thinking to myself that this issue,

which had been reported years earlier in the press, continued to be the center of political discussion.

William B. Canfield, III

City of Washington)
) ss.
District of Columbia)

SUBSCRIBED AND SWORN to before me this 8 th day of June, 1990, by William B. Canfield, III.

NOTARY PUBLIC

My commission expires: July 14, 1992

CONFIDENTIAL

AFFIDAVIT OF DOUGLAS E. COE

DOUGLAS E. COE, being sworn, deposes and says:

1. I am an associate of the International Foundation with responsibility for coordination of Leadership Prayer Breakfast groups in parliaments around the world. I make this confidential affidavit in connection with the current proceedings before the United States Senate Select Committee on Ethics involving Senator David F. Durenberger.

2. Although I had met Dave Durenberger briefly before he first ran for the Senate in 1978, it is during his time in the Senate that I have come to know him well. He originally sought me out in 1984 for support during some difficult times. As spiritual guidance became more important in his life, we began to meet personally one morning each week in 1985-1986. We have become good friends and play golf and travel together. Our relationship encompasses both spiritual and personal concerns, and I have become intimately familiar with Dave's life and problems.

3. Dave has had tremendous tensions in his personal and family life. His first wife died of cancer leaving him with four young sons to raise. He later married

Penny, who tried to assume the role of mother to the boys. The problems inherent in these circumstances caused horrendous strain and led the family to the breaking point.

4. Dave's family situation was made worse by his very difficult work schedule. Since I have known Dave, he has always had a very strong commitment to his Senatorial duties. This often leads him to put work ahead of his family and other personal matters. In my experience, I too often have seen the expectations of a public position destroy personal lives.

5. From the time I first met Dave as a Senator, his sons were having drug and discipline problems. This was a source of great struggle in his marriage. Penny was upset that Dave was focusing most of his energies on his professional life and not setting discipline in the home. When she tried to set and enforce certain rules, the boys would take their problems to Dave who would often fail to support her in her efforts. This and other conflicts eventually led to a split in the home. Dave separated from Penny in February of 1985 and moved into The Cedars.

6. In addition to family and professional pressures, Dave was also experiencing financial difficulties. He had discussed with me how hard it was for him to maintain two homes, one in the Washington area and one in Minnesota. The drug problems of two of his sons were

severe enough to require periods of institutionalization and produced high medical expenses. Educational expenses for his sons and Penny were also a burden. I know that Dave was borrowing heavily and that his income from speaking was crucial in keeping him financially afloat. Nevertheless, I also know that he considered his Senate business and family concerns more pressing, and finances were never foremost in his mind.

7. During this difficult period when he was struggling in all the important areas of his life, Dave was not able to make good decisions. He seemed to lose his perspective, and his priorities became confused. He hit his lowest point during 1984-1985, and there were days when it was difficult for him to get out of bed in the morning.

8. It was during this low point that I and several of Dave's other friends tried to help him. We encouraged him to get the help of a marriage counselor, which he did beginning in May of 1985. The tough times also led him to seek strength in the Lord to help him through.

9. It was during this low point that Dave came to rely so heavily on others. He didn't have the time or energy to deal with all the details of his life; he had to conserve his resources to fulfill his Senatorial and family responsibilities. His frame of mind led him to trust others with too many of his business arrangements.

10. It is my understanding that Dave told his lawyers generally what he wanted to do about personal business and left the details to them. Because of his interests in health and other matters, Dave was very excited about his publishing opportunities. The very fact that he asked his attorney to make the arrangements indicates to me his desire to make everything legal. Nevertheless, I am certain that Dave was not spending time focusing on his condominium or book deals during this period; he was simply trying to keep his life together.

11. The basis of much of my interaction with Dave is my concern for the overall integrity of his life. As problems with his business arrangements appeared in the press, I would probe in my discussions with him, asking him if he was sure he was doing the right thing. My purpose was not to make his decisions, but to support him as a friend. Although I didn't necessarily agree with all Dave's decisions, I know of nothing to indicate that he ever intended to do anything improper. Dave and I have a very honest relationship. Because I am involved in so many other aspects of his life, I feel he would not try to deceive me about his business arrangements. I am convinced Dave did not think that anything was wrong with his book deal and seemed to be totally surprised when questions were raised.

12. I sincerely feel Dave is not a person to try to take advantage of people or to do things he knows are improper. I spend my life talking to public men, and I am convinced that Dave is not intentionally deceitful nor dishonest. However, Dave has not always made the best decisions. He has been naive and allowed himself to be put into bad situations when his personal problems caught up with him at home. But to me, to make a leap to thinking Dave has intentionally committed illegal or improper acts is unjust and simply wrong. Dave has made major mistakes, but fortunately he has been able to learn from those mistakes and is making great progress in his personal life now.

13. I would be glad to meet with members of the Committee or their staff if they have any questions I might be able to help with.

Douglas E. Coe

Signed and sworn before me this 22nd day of May, 1990

Cheryl B Smith
notary public - at large

My commission expires Oct. 8, 1990

AFFIDAVIT OF GARY LEE DIAMOND

County of Hennepin)
) :SS
State of Minnesota)

I, Gary Lee Diamond, being first duly sworn, do hereby depose and state as follows:

1. I am the president and sole shareholder of Northwest Beverages Journals, Inc., which publishes trade journals in the restaurant and hospitality fields. I am also the president and sole shareholder of Piranha Press, which published Senator David F. Durenberger's two books, Neither Madmen Nor Messiahs and Prescription For Change. I make this affidavit for submission to the Senate Select Committee on Ethics in connection with the proceedings involving Senator Durenberger.

2. In late 1983 or early 1984, I approached Senator Durenberger about publishing his two white papers on defense issues in book format. I was interested in both establishing a small publishing company for political and historical books and in promoting the Senator's views with which I agreed. The white papers were edited and published under the name Neither Madmen Nor Messiahs in the fall of 1984. The book was sold in B. Dalton Bookseller bookstores.

3. In 1986, Piranha published Prescription For Change, which was a collection of the Senator's speeches on

health policy issues. That book was sold through a direct mail marketing campaign targeted at hospitals, insurance companies and others involved in health-related industries.

4. Subsequent to the release of Neither Madmen Nor Messiahs, Michael Mahoney, the Senator's attorney, asked me if I would be willing to pay Senator Durenberger a fee for making appearances to promote the book. Mr. Mahoney told me I would be responsible for arranging the appearances for which I could charge a fee, but that scheduling would have to be cleared through the Senator's office. In return for doing the appearances, the Senator would be paid $12,500 quarterly. I never discussed these matters with Senator Durenberger, but only with his attorneys.

5. I agreed to this arrangement on the condition that it was legal. Mr. Mahoney's office drafted the contract between Senator Durenberger and Piranha Press and obtained approval of the arrangement from the Federal Election Commission. I believed, based upon the FEC's ruling and Mr. Mahoney's representations, that the arrangement and its implementation were legal.

6. As it turned out, requests for the Senator's appearances made to the Senator's office were referred to Piranha Press. No one suggested to me that this was improper. Mr. Mahoney's office, acting on behalf of Piranha Press, coordinated the appearances with the Senator's

office. His office then prepared letters to the organizations setting forth the terms and conditions of the appearance for my signature. On a few occasions, I forwarded copies of the Senator's books to organizations that agreed to display them at the Senator's appearances. However, in the majority of cases, I did not provide copies of the books or other promotional materials to the organizations.

7. Pursuant to the terms of the agreement, Piranha Press paid Senator Durenberger a total of $100,000 for appearances made in 1985 and 1986. The contract terminated by its terms after two years and was not renewed.

8. At all times I operated under the belief that the arrangement between Piranha Press and Senator Durenberger was legal and had been approved by the FEC. I have no knowledge that Senator Durenberger had any intent unlawfully to avoid statutory honorarium limitations.

Gary Lee Diamond
Gary Lee Diamond

Subscribed and sworn to before me this 1st day of June 1990.

Notary Public

My Commission expires: ____ ____

ADAM J DIAMOND
Notary Public, Hennepin County, Mn.
My commission expires Mar. 20, 1992

AFFIDIVIT OF LORI KRAGE EDSTROM

LORI KRAGE EDSTROM, being sworn, deposes and says:

1. I am employed by the firm of Edstrom/Skeels in Winona, Minnesota, as a Realtor. I make this affidivit in connection with the current proceedings before the United States Senate Select Committee on Ethics involving Senator David F. Durenberger.

2. I began doing volunteer work for Senator Durenberger in 1982 and joined the Senator's staff as its bookkeeper in 1983. Initially, my primary duties were to make travel arrangements and prepare the vouchers for Senate reimbursement. I later became responsible for personnel training, hiring of personnel, and computer systems. I resigned my position on the Senator's staff in early 1985.

3. I was aware that the paperwork forming the partnership was not completed on a timely basis. Members of the staff, and especially the Senator, were frustrated with the delay. I wrote several memoranda regarding the creation of an account to facilitate the implementation of the partnership.

4. In response to a request from Tom Horner in March 1984, I contacted the Rules and Ethics Committees to verify the propriety of reimbursement for rents paid to the partnership. I am not certain with whom I spoke, but, having reviewed the lists of committee staffs from that period, I believe I spoke to John Childers and/or Ann Cook at Rules and Wilson Abney at Ethics. In each instance, I identified myself by name and as a member of Senator Durenberger's staff, and asked if the Senator could be reimbursed for stays in a condominium owned by a partnership of which he is a partner. The responses I received were that he could so long as the condominium was not his principal residence. I recorded my contacts and the essence of the responses I received in a memorandum to Tom Horner dated March 13, 1984. (Att. 1)

Lori Krage Edstrom
page 2

5. There was no attempt to deceive the Senate about the ownership of the condominium. My March 21, 1984 memorandum (Att. 2) about changing the partnership's name must be read together with my March 13, 1984 memorandum about my contacts with the staff of the Rules and Ethics Committees apprising them of the situation. Moreover, we involved Mr. Steingart from Mr. Mahoney's law offices in the process. I assumed he would have objected had any improper intent or conduct been perceived by him. To the best of my knowledge and belief, Senator Durenberger intended that all matters relating to reimbursements be handled in a lawful manner.

6. I submitted vouchers and receipts to the Senate Disbursing Office for per diem reimbursements for the Senator's official business stays in the condominium. In all instances, the Senator's staff attempted to ensure that he received reimbursement only when his stays were connected with official Senate business.

Dated this 1st day of June, 1990.

Lori Krage Edstrom
Lori Krage Edstrom

SUBSCRIBED AND SWORN to before me this 1st day of June, 1990, by Lori Krage Edstrom.

LINDA E. CARR
NOTARY PUBLIC—MINNESOTA
WINONA COUNTY

Linda E Carr
NOTARY PUBLIC

My commission expires: 10/6/95

LINDA E. CARR
NOTARY PUBLIC—MINNESOTA
WINONA COUNTY
MY COMMISSION EXPIRES 10-06-95

TO: TOM

FROM: LORI

RE: CONDO TRANSACTION

DATE: MARCH 13, 1984

SPOKE WITH MY CONTACTS IN ETHICS AND RULES AND NO ONE HAS A PROBLEM WITH THE PARTNERSHIP SITUATION. ETHICS SEEMED TO INDICATE THAT IT WOULDN'T BE THE FIRST TIME IT HAD BEEN DONE (REFERRED TO SEN. GLENN AND FLORIDA PROPERTIES).

RULES ALSO SAID NO PROBLEM, BUT I DECIDED THAT IT WOULD BE WISE TO CHECK WITH ETHICS ALSO.

I STILL THINK THAT WE WOULD WISE TO GET THE PARTNERSHIP ACCOUNT UP AND RUNNING. IT JUST LOOKS BETTER.

TO: SENATOR

FROM: LORI JX

RE: MISCELLANEOUS

DATE: MARCH 21, 1984

PARTNERSHIP

JEAN STOW WILL BE OPENING AND ADMINISTERING THE PARTNERSHIP ACCOUNT. SHE IS TALKING WITH ROGER ABOUT THIS PROCESS AS WELL AS WITH ME.

SHE WILL BEGIN TO ISSUE THE MONTHY INVOICES FOR YOUR STAYS IN THE CONDO. THE NAME OF THE PARTNERSHIP WILL BE "703/603 PARTNERSHIP" ASSN.? AND THAT NAME WILL BE REFLECTED ON THE INVOICES. (I DIDN'T THINK IT LOOKED GOOD TO HAVE DURENBERGER/SHERER PARTNERSHIP ON THE INVOICES THAT WERE BEING SUBMITTED TO THE SENATE--TOM AGREED. ROGER S. SUGGESTED THIS NAME FOR THE PARTNERSHIP, AND UNLESS YOU OBJECT DAVID STEINGART WILL PROCESS THE LEGAL PAPERWORK.)

GENE H. HAS BEEN VERY GOOD ABOUT HELPING WITH FOLLOW THROUGH ON THIS.

TAXES

MORE QUESTIONS FROM DAVE S....

Penny needs to send me...

DID/WILL PENNY'S PARTNERSHIP FILE A K-1 TAX RETURN? / [illegible] it's [illegible]

DECEMBER 11TH CONTRIBUTION TO CHILDREN'S HOSPITAL--WAS THIS A CHRISTMAS TOY OR A CASH CONTRIBUTION?

I HAVE A CONTRIBUTION RECEIPT WHICH I LISTED IN MY INFORMATION FOR $500.00 (MADE TO ST. JOHN'S ABBEY AND UNIVERSITY.) DAVE DOES NOT FIND THIS IS YOUR NOTES--YOU DID MAKE THE CONTRIBUTION FOR AUDITORIUM RENOVATION, CORRECT?

REIMBURSEMENT

Thump!

TIM PICKED UP LUNCH FOR PENNY AND PAM B. TODAY. SINCE PAM IS FROM MINNESOTA CAN WE PROCESS THE $17.05 WITH D2 AS ENTERTAINING MN CONSTITUENT OR DO YOU WANT TO REIMBURSE PERSONALLY? AMOUNT: $17.05

AFFIDAVIT OF JODI MATHISON HACKETT

City of Washington)
) : SS
District of Columbia)

I, Jodi Mathison Hackett, being first duly sworn, do hereby depose and state as follows:

1. I began to work for Senator Durenberger on June 18, 1984 as a receptionist. In January of 1985 I transferred to the Intergovernmental Relations Subcommittee, which Senator Durenberger chaired, and served as the chief clerk. During this time I remained regular contact with his personal office. I transferred back to the personal office on September 3, 1985 to become the Senator's personal secretary and scheduler. In May of 1989 I became his executive assistant.

2. I am very familar with the office activity and staffing from June of 1984 to the present. Senator Durenberger has relied heavily on advice from his staff and counsel in making decisions relating to both his personal and professional affairs. He has also relied on these same persons to handle the implementation of, and the administrative details relating to, these decisions. He has not been completely involved in the process. Senator Durenberger has always focused his energies on his legislative agenda and serving his constituents, rather than on the micromanagement of the office.

3. There were turnovers in key personnel in 1985 (Administrative Assistant, Legislative Director, Press Secretary,

Office Manager, Personal Secretary/Scheduler) and these positions were not filled immediately. The lag time in hiring replacements resulted in confusion, lack of accountability and misinformation on the part of both the then current staff members and the replacements hired for the above mentioned positions. In fact, from early March through the first of July of 1985 there was no administrative assistant and it was during this time that the book promotion agreement was implemented. A new administrative assistant, legislative director and personal secretary/scheduler (which was myself) all began arriving between July and September of 1985. We were the three people on which the Senator relied the most heavily to manage his daily activities. Because all three of us were new to our positions, implementation of all his activities, the book promotion agreement included, was difficult, especially during the first six months of our tenure.

4. Shortly after I re-joined the personal staff in 1985, Douglas Kelley explained to me the details of Senator Durenberger's agreement with Piranha Press, his publisher, for the promotion of his book, Neither Madmen Nor Messiahs. He told me that, when the Senator made a book promotion speech, payment was made to the publisher and not to the Senator. Thereafter, I had a conversation with Michael Mahoney, Senator Durenberger's attorney, who instructed me to tell organizations requesting the Senator's appearance that the Senator had an agreement with his publisher for the promotion of his book, that payment of the fee would be made to the publisher, rather than the Senator, and that he (Mr. Mahoney) would contact the organizations to confirm the

appearance. Either Mr. Kelley or Mr. Mahoney informed me about the range of fees being charged by the publisher.

5. Speech requests that were made to our office were often referred to Piranha Press. When a speech had been designated a book promotion speech, I would call the contact person and tell him that the Senator was interested in speaking to the group. I would also explain that the Senator had an agreement with his publisher for the promotion of his book, what the publisher's fee would be, that payment of the fee would be made to the publisher, rather than the Senator, and that Mr. Mahoney would be in contact with him. I would then forward the information regarding the speech request to Mr. Mahoney. It was my understanding that mr. Mahoney would contact the organization. Thereafter, he would send me a copy of a letter sent by Piranha Press to the organization confirming the details of the appearance. On occasion, book promotion appearances would be arranged by our office without any involvement by Mr. Mahoney.

6. I was never advised by Mr. Mahoney or anyone else that the manner in which I handled Piranha Press appearances was inappropriate or improper. If organizations had questions about the Senator's arrangement with Piranha, I referred them to Mr. Mahoney. I never referred questions of this nature to Senator Durenberger. The vast majority of the individuals with whom I spoke did not complain about the book promotion agreement. Most of them asked very few questions. If there were questions, complaints or problems I either referred the individual to Mr. Mahoney, or passed the information on to Mr. Kelley or Mr.

Mahoney. I did not communicate this information to Senator Durenberger.

7. I am familiar with the condominium reimbursments that were submitted to the Senate and know that they indicated the Senator was staying in the same condominium each time he returned to the Twin Cities and that they were submitted in this manner for over six years.

8. To the best of my knowledge and belief, Senator Durenberger did not intend to illegally circumvent the honoraria limitations through his arrangement with Piranha Press, nor did he intend, at any time, to violate Senate Rules by any of his actions.

Jodi M. Hackett

Jodi M. Hackett

Subscribed and sworn to before me this 8th day of June 1990.

Kirsten P. Grover

Notary Public

My Commission expires: November 14, 1992

AFFIDAVIT OF DONNA E. HANBERY

STATE OF MINNESOTA)
) ss.
COUNTY OF HENNEPIN)

DONNA E. HANBERY, being first duly sworn, do hereby depose and state as follows:

1. I am a principal in the law firm of Mahoney Walling and Kelley, Professional Association, formerly Curtin, Mahoney & Cairns. I am admitted to practice law in the state of Minnesota. I make this affidavit for submission to the Senate Select Committee on Ethics in connection with the proceedings involving Senator David F. Durenberger.

2. In the late summer or [illegible] of 1984, Michael Mahoney, a principal in my firm, asked me to look at questions relating to publishing agreements and the structuring of such an arrangement, whereby Piranha Press or some other publisher would pay Senator Durenberger a fixed sum to make appearances to promote his books or publisher. Senator Durenberger and Gary Diamond, president of Piranha Press, wanted to ensure that any such agreement passed muster under the federal election laws and the honorarium limitations. I understood that they wanted us to give them a legal opinion that such an agreement would be lawful under the Federal Election laws.

3. I researched the issues in the Federal Election Law Reporter. My research notes are appended hereto as Attachment 1. After completing my research, which included a review of FEC advisory opinions, I identified a primary issue as whether the payments under the proposed contract would be considered honoraria

or a stipend. It appeared to me that the payments could constitute a stipend because they would be for the Senator's continuing services to the publisher. However, because I had been unable to find any advisory opinions directly on point, I suggested to Mr. Mahoney that we request an advisory opinion from the FEC.

4. At the direction of Thomas Horner of Senator Durenberger's staff, I contacted Gary Diamond and his attorney, Sam Stern, for the purpose of reducing an agreement to writing. I prepared and negotiated a draft of the Agreement, which provided, among other things, that Piranha Press would pay Senator Durenberger a fixed amount in quarterly installments over a two year period for making appearances to "discuss, speak on, or otherwise promote" his book and his publisher.

5. By letters dated September 26, 1984, I forwarded a draft of the Author-Publisher Agreement and a draft of the request for an FEC advisory opinion to Messrs. Stern and Horner. The request for the advisory opinion was forwarded to the FEC by letter dated October 19, 1984. A corrected copy of the Author-Publisher Agreement was forwarded to Mr. Stern by letter dated October 19, 1984.

6. In the request for the advisory opinion, I stated that Piranha Press would pay Senator Durenberger an agreed to sum in quarterly installments over a two year period as compensation for the Senator making appearances to promote the book and the publisher. I invited the FEC to contact me if it needed additional information. Because this appeared to be a somewhat unique arrangement, I assumed that if the FEC thought additional information was necessary to evaluate the request, it would come back with specific questions. The

FEC responded with a letter dated October 25, 1984 stating that it would contact me if additional information was needed. However, the FEC never asked for additional information.

7. On December 6, 1984, the FEC issued an advisory opinion in which it concluded that the payments to be made by Piranha Press to Senator Durenberger would constitute a stipend and not honoraria. I conveyed this information to Senator Durenberger's office by telephone on December 7, 1984.

8. Throughout my involvement in this matter, it was made very clear to me that Senator Durenberger was interested in entering the agreement with Piranha Press but only after we had given him our legal opinion and after we had received the FEC opinion. To the best of my knowledge, the contract was not implemented until after receipt of the FEC advisory opinion. I have no knowledge that Senator Durenberger had any intentions to avoid the honorarium limitations by illegal conduct.

Dated this 7 th day of June, 1990.

Donna E Hanbery

Donna E. Hanbery

Subscribed and sworn to before me this 7 th day of June, 1990, by Donna E. Hanbery.

Beverly M Olsson

Notary Public

My Commission expires: 4/23/93

BEVERLY M. OLSSON
NOTARY PUBLIC — MINNESOTA
HENNEPIN COUNTY
My Commission Expires Apr. 23, 1993

Fed'l Election Comm. rules

Q - does a disclaimer "paid for by" or to appear on book -

Such a notice must go on any comm cation that "expressly advocates the elect , defeat of a clearly I.d-ed candidate. (or solicits $)

Honorarium - anything of value rec'd if as consid for an "appearance, speech, article,,".

article "means a writing other tha a book which has been or is intended be published,"

Part 113 - Excess Campaign Funds 2 USC 439a

113.1 (e) Excess campaign funds' means amts. rec'd a candidate as contribs which he or she determines are in excess of any amt. necess to defray his or her campaign expends.

Excess funds can be used . . .

(d) May be used for any other lawful purpo except that, w respect to any ind wh is not a Senator ,,,, to the Congress on the of the enactment of the Fed'l Election Campaign Amendments of 1979 (1/8/80), no such amts. be converted by any person to any pers. use, other than; to defray any ordinary + necessar expenses incurred in connection w h or her duties as a holder of Fed'l office, or to repay to a candidate any loan the proceeds of which were used in connection w his or her campaign."

A CCH looseleaf on the Fed'l Election Campaign Laws -

There's a treatise - on the subject -

R. Bauer & D. Kafka -
US Fed'l Election Law 1982

Advisory op. π 5676 CCH Fed'l Elec. Camp. Fin. Guide

Prior to 1979 - 2 USC 439a & 11 CFR 113.2 allowed "excess funds" (not needed to defray campaign expenses" to "be used for any lawful purpose"

Law changed in 79 to prohibit conversion of excess funds to pers. use except in the case of an ind. who was a Senator or Rep in Congress on 1/8/80 - accordingly here a Senator who was in Sen. pre 1980 could have 70 K + car.

Comm. left open Senate rules + tax Q.s

Ops. 5601 - 5581 - 5562 - 5591 -

π 5583 Doles 5 yr. radio commentary k. is not subject to honorarium limitation b/c a stipend [illegible] (gets it continuously), not an

[illegible]

— π 5614

Many ops. note that Comms have broad discretion in deciding upon those expens that will best advance their political purpose — (fund spouse cld. travel w/ hus. for an election influencing purpose & thus. ord + necs. expense
~~sct 5565~~

AO-1979-76 π 5453 - Sale of books to corp.

"Books cannot be sold by a political comm. to corps. when the books were mean to raise funds for the comm.

Ruling says full amt. of price pd. for book (whether or not a profit is made) = a contrib - thus no sale to corps. even is sold at or below cost.

7020

π 5361 - AO 1978-72 - Sale of Philosophical Pamplets - a candidate proposed to sell " " for $3-½ expressing his unusual views - ~~[illegible]~~ wld. appeal on nat'l basis - not just local constituency - ~~[illegible]~~ funds wld. be treated as earned bus. income & treated as pers. fun (provided price charged a reas. reflection of his costs + profit - same as wld. charge if not a candidate - & xtra wld be a contrib.

(1977-45) - If arts. include solicitation or advocacy of his election or defeat of sd candidate then wld. be reportable exp. & contribs.

AO 1983-25 - Std. for reporting purposes was suff to report $'s given to a corporat media consultant w/o itemizing what media consultant did w $.

(2 dissenting ops. on the 4-2 vote of

memo - Living exp. 5341 5705 / int. 55 73 // campaign funds 5605

AO 1978-40 Candidate borrowed 3900 from 10 people (3900 each) + used funds for poss. living expenses while deciding if should be a candidate. B/c did decide to run - FEC finds the funds/loans were contribs & were subject to 1000 limit but as loans were repaid w/ int., lender no longer charged w a contrib. for limit purposes under 2 USC §441(a)

A.O. 1982-64

1980-44 Comm. has repeatedly said that the Act permits campaign contribs. to be spent for living expenses of a candidate during the course of a campaign

+ Candidate ass'ed loan taken out to cover living expenses during campaign - this was ok))

1980-49 - specifically say §439(a) doesn't change FEC (view that campaign comm. has wide discretion in how its funds may be spent & can still be used for living expenses w/o offending 439(a)).

regulations - def'ing how "purpose" of exp. shld be descri- bed in reports - 104.3(b)(3)(i)(3)

In reports section - ¶ 9155 shows a how to fill out report - shows a 1K loan made to a candidate & p. shows loan as reported w/o int. & no due date.

Standing Rules of Senate
XLII on contribs. - to be used only to influence his nomination for (i) election -
3 "Nothing in this rule shall preclude the use of contribs. to defray expenses for travel to & from each Sen's home State; for printing & other expenses in connection w the mailing of speeches, newsletters, & reports to a Senator's constituents; for expenses of radio, television & news media methods of reporting to a Senator's constituents; for telephone, telegraph, postage, & stationery expense in excess of allowance, & for newspaper subscriptions from his home State.

¶ 5369 - AO 1978-80
Candidate cld. rent space in bldg. he owned to his campaign comm. - Comm's have broad discretion on how to use funds - (As long as payments properly reported)

¶ 5706 AO 1983-1 - Likewise it's ok for candidate to collect rent for rental of storage space in his home to campaign comm.

AO 1975-77 - royalties from a book ≠ honorarium -

AO 1978-59 - amts. pd. for reprints of arts = honorariums. ¶ Every occasion of publication, or republication of an article, other than in a book . . . = an honorarium.
If was published or reprinted in a book ≠ honorarium.

AO 1979-78 - Serialization payments rec'd from [illegible] mag. by book publisher & then distributed 85% to Senator Moynihan ≠ honorarium (fact that publisher was involved seemed to make a diff).

AO 1980-76 Amts. Senator Proxmire rec'd for doing radio & David Letterman shows on a regular basis were stipends (rec'd on " ") ≠ honorarium.
(Did a monthly radio program where did Golden Fleece award & rec'd $100.)

AO 1975-46 - regular T.V. appearance = stipend ≠ honorarium - stipend = fixed - regular compensation.

Q on taking Honoraria - depositing + keeping int.:

a) Cld. look bad

b) If 'control' funds during year arguably (tax deposits are due)

c) Ruling deals w where honoraria deposited & sevl. cks "equalling amt. of honoraria" sent to charity. This found ok. The "difference between amt. sent & kept" is credited or deemed to be "accepted" by Member. Who's to say they wldn't find what sent part of int. & not part of honorarium so amt. kept cld. exceed limitation.

d) Inter. Ruling didn't deal with (or refused to answer) Q on how much time cld elapse between receipt of ck. & payment to charity. They sd. Ethics Com. doesn't have auth to answer this b/c no time limit in stat. - yet this leaves issue open.

9/11/84 -

Tom Horner says that he talked to the atty who wrote the advisory opinion & he said unequivocally that it was ⓐ ok to hold till end of the yr & that ⓑ it wld. be ok to put it in an int bearing acct so long as the amt. of the ~~[illegible]~~ honorariums was paid out by end of yr.

He was aware of [illegible] implications of needing to declare it

For DJS - he can deduct 50% of his Adj. Gross income to charitable orgs. (so long as not foundations or cert. charities where % goes down).

Conflict of Int Rules

XXXVII - no outside bus. or prof. activity for comp. unless reported in writing when activity commences.

Standing rules of u Senate - 1/3/80

XXXVIII - Prohibition of Unoff'l Office Accts

No member to have unoffi'l office accts.

#1 - supp. can use pers. funds — off'l funds, funds derived from a political Comm. as def'd in §301(4) & funds as reimbursements....

#2 No contrib (as def'd in § 301(8) of Fed'l Elect. Camp. Act of 1971 as amended 2 USC 431 shall be converted to pers. use of any Member ... For the purpose of this rule "pers. use" does not include reimbursement of expenses incurred by a member in connection w his off'l duties

AFFIDAVIT OF EUGENE S. HOLDERNESS

EUGENE S. HOLDERNESS, being sworn, deposes and says:

1. I am a resident of Minneapolis and the chief operating officer of a Minneapolis law firm. I make this affidavit in connection with the current proceedings before the United States Senate Select Committee on Ethics involving Senator David F. Durenberger.

2. My family and I have been close friends with Senator Durenberger and his family since we moved to Minnesota in 1972. The Senator and I share similar views about spiritual matters, and we often meet on Saturday mornings when he is in Minnesota to pray and discuss our personal lives. Our families have taken vacations together.

3. I served as the Senator's campaign manager from August 1981 to October 1982. After the election, I became a consultant to the campaign for about six months regarding fund raising and wind-down activities. Since the 1982 election, I have been one of the Senator's informal advisors. In 1988, I worked as a volunteer on his reelection campaign.

4. After the 1982 election, some of Senator Durenberger's advisors, including Randy Johnson, Mike Mahoney, Roger Scherer, and myself, suggested that he needed to evaluate his personal finances. He had four sons of college age, two with chemical dependency problems, and owned two homes. Although the Senator liked to spend a great deal of time in Minnesota, it was

my opinion that he should not own two homes any longer. Rather, I thought he should sell his condominium and stay in a hotel when in Minneapolis. I was aware of a legal opinion by Randy Johnson, described below, essentially advising that the Senator could receive Senate reimbursement for official business stays in Minnesota if they were not at his principal place of residence.

5. In the spring or early summer of 1983, Mr. Scherer proposed a mutually beneficial transaction to Senator Durenberger involving their two condominiums. The two decided on July 28, 1983, to combine their units in a joint business venture and that Senator Durenberger would rent his former unit from the entity. They left it to the lawyers to work out the details. Originally an exchange of the units was contemplated, but tax counsel advised that a partnership would make more sense from a tax standpoint. Eventually, partnership papers reflecting the date of the July agreement were prepared and signed.

6. Randy Johnson had provided advice to Senator Durenberger regarding FEC and other governmental regulatory issues. After his advice on reimbursement matters was sought, Mr. Johnson advised the Senator that his official business overnight stays in Minneapolis on Senate business would be reimbursable if his legal and voting residence was changed to his original family home of Avon, Minnesota, and if he rented the condominium. This move made good political sense because part of the Senator's political success has been based on his popularity in rural areas of the state.

7. I am convinced that, in entering into the

partnership arrangement and seeking reimbursement from the Senate, Senator Durenberger did not intend to deceive the Senate or to obtain reimbursements to which he was not legally entitled. To the contrary, he sought legal advice to ensure that his actions were entirely lawful.

8. Beyond that circumstance, I know Senator Durenberger to be an honest man. However, I do believe that Senator Durenberger often does not focus well on the details of his personal financial life and tends to rely too much on advisors and friends in these regards, an approach that apparently has not worked well. This pattern was especially evident during the 1983-1987 period when he was experiencing significant personal and family difficulties. Unfortunately, too many people were involved in the Senator's personal finances, and not all transactions were handled as efficiently and wisely as they should have been. Nonetheless, Senator Durenberger sought and followed legal advice, and, in my opinion, at all times attempted to conduct his business affairs in an honest and lawful manner.

Dated this 31 st day of May, 1990.

Eugene S. Holderness
Eugene S. Holderness

SUBSCRIBED AND SWORN to before me this 31 st day of May, 1990, by Eugene S. Holderness.

JAN F. BROIN
NOTARY PUBLIC—MINNESOTA
HENNEPIN COUNTY
MY COMMISSION EXPIRES 8-13-90

Jan F. Broin
Notary Public

My commission expires: 8/13/90

June 5, 1990

AFFIDAVIT OF THOMAS HORNER

THOMAS HORNER, being sworn, deposes and says:

1. I am a public relations consultant associated with Himle Horner, Inc., in Bloomington, Minnesota. I make this affidavit in connection with the current proceedings before the Untied States Senate Select Committee on Ethics involving Senator David F. Durenberger.

2. I joined Senator Durenberger's staff as press secretary in 1978. I became his administrative assistant in the fall of 1983 and remained in that position until early 1985.

3. During the early part of 1983, several of Senator Durenberger's friends, including Gene Holderness, Randy Johnson, and myself, became concerned about the amount of the Senator's personal expenses, especially college-related costs for his sons and expenses connected with owning homes in two locales. There were several discussions as to how these expenses could be minimized. Mr. Holderness asked Mr. Johnson to investigate the per diem regulations and to determine how the Senator could qualify for reimbursement for Minneapolis lodging expenses.

Exhibit 8

4. At some point, Roger Scherer, who owned condominiums no. 703 in the same building as the condominium that Senator Durenberger owned (no. 603), became involved. Several transactions were proposed for these condominium units: sale of 603 and stays in a hotel; sale of 603 and rental by the Senator of 703; exchange of the condominiums; and contribution of the units to a partnership from which the Senator would rent no. 603. Although I was not privy to the details or financial rationale of the proposed transactions, I do know that Senator Durenberger and Mr. Scherer had reached an agreement in principle to place the two properties in a joint business venture by mid-summer 1983. The agreement was that the Senator would rent the condominium from this joint business venture.

5. I had conversations with Mr. Johnson regarding the Senator's ability to claim per diem reimbursement for condominium rents. I was informed that, if the Senator's voting and legal residence was in Avon, Minnesota, which is at least 75 miles from Minneapolis, then he could qualify for reimbursement if the condominium would not be his principal place of residence, which was McLean, Virginia.

6. To further ensure the propriety of the Senator's reimbursements for rent, I instructed Lori Krage to check with either Rules or Ethics to make sure the reimbursements were done correctly. I subsequently received a memorandum from her saying that both Committees had no problem with the arrangement. (Att. 1)

7. Reimbursement vouchers were filed for August through December 1983 because I received instruction from both Michael Mahoney and Mr. Johnson that the deal was complete. However, I became aware through conversations with Mr. Johnson and Mr. Holderness late in 1983 that partnership documents had not been signed. I asked that the paperwork be completed, even though I considered this a minor detail. Although I lacked complete information regarding the status of partnership documents, I relied on the advice of counsel as to the propriety of filing for reimbursement.

8. The partnership's name change was not done with any intent to mislead. Misleading would have served no purpose in light of the opinions of Johnson and the staffs of the Rules and Ethics Committees that it was permissible to seek reimbursement for rent for a condominium owned by a partnership in which the Senator had an interest. See paragraph 6 above.

9. More generally, to the best of my knowledge and belief, neither the Senator nor anyone else intended or attempted to deceive the Senate or to acquire reimbursements to which he was not entitled. Rather, his friends and advisors sought to help him out of a difficult financial situation in a manner that comported with all relevant laws and rules.

10. In the fall of 1984, Senator Durenberger and I had discussions with his personal attorney, Michael Mahoney, relating to the possibility of the Senator's earning income in connection with his book Neither Madmen Nor Messiahs. We asked Mr. Mahoney to explore whether there was a legal and ethical way the Senator could do so.

11. To the best of my recollection, Mr. Mahoney responded with a proposal that the Senator make appearances to promote the book before various organizations for which his publisher, Piranha Press, would compensate him. We asked Mr. Mahoney both to research this issue further and to request an opinion from the appropriate governmental body as to the legality of such an arrangement. Senator Durenberger wanted to make certain that the proposed arrangement was completely legal and approved by the appropriate body before it was implemented. We relied upon the attorneys to give us an opinion as to the legality of the arrangement and to obtain the necessary approval.

12. By letter dated September 26, 1984, Donna Hanbery, an attorney in Mr. Mahoney's law firm, sent me a copy of a draft Author-Publisher Agreement between the Senator and Piranha Press. The Agreement provided, among other things, that Piranha would pay the Senator a fixed fee in quarterly installments over a two year period in exchange for making appearances to promote Neither Madmen Nor Messiahs and the publisher. She also sent me a draft of a

letter to the Federal Election Commission requesting an advisory opinion as to whether the income the Senator would receive from Piranha would constitute honoraria or instead would constitute a stipend not subject to the honorarium limitations.

13. I directed Ms. Hanbery to send the request for the advisory opinion to the FEC. The contract was not implemented until after the FEC issued its Advisory Opinion concluding that the payments from Piranha Press would constitute a stipend and not honoraria.

14. When I became aware that requests for speaking engagements that had been accepted by the Senator would be referred to Piranha Press for handling under the contract and that the organization involved would pay fees to Piranha Press, I asked Mr. Mahoney whether the request for the FEC advisory opinion fairly reflected these circumstances. Mr. Mahoney assured me that the request for the advisory opinion was based upon a fair representation of the arrangement. I related this information to Senator Durenberger.

15. By letter dated February 15, 1985 (Att. 2), I sent Mr. Mahoney a number of honorarium invitations that had been accepted on behalf of Senator Durenberger prior to the Agreement between the Senator and Piranha Press. In the letter, I expressed my understanding that, in accordance with the publishing Agreement, Mr. Mahoney's law firm, acting as an agent of Piranha Press, would negotiate and

collect the fee for these appearances. Mr. Mahoney never advised me that this conduct was inconsistent with the FEC advisory opinion or other wise improper.

16. To the best of my knowledge and belief, Senator Durenberger acted in good faith in implementing his contract with Piranha Press at all times during my tenure on his staff. He did not enter the Agreement for the purpose of unlawfully circumventing the honorarium limitations. Rather, he sought and relied upon the advice of his counsel as to the legality of the arrangement, and the acceptance of payments pursuant to the arrangement, prior to its implementation. He also relied upon his counsel to negotiate and draft the Agreement with his Publisher, obtain the necessary opinion from the FEC, and ensure that the Agreement was properly implemented.

Thomas Horner

Subscribed and sworn to before me this 5th day of June, 1990.

Deborah A. Lagerquist
Notary Public

My Commission expires: 2-13-96

DEBORAH A. LAGERQUIST
NOTARY PUBLIC—MINNESOTA
HENNEPIN COUNTY
My Commission Expires 2-13-96

TO: TOM

FROM: LORI

RE: CONDO TRANSACTION

DATE: MARCH 13, 1984

SPOKE WITH MY CONTACTS IN ETHICS AND RULES AND NO ONE HAS A PROBLEM WITH THE PARTNERSHIP SITUATION. ETHICS SEEMED TO INDICATE THAT IT WOULDN'T BE THE FIRST TIME IT HAD BEEN DONE (REFERRED TO SEN. GLENN AND FLORIDA PROPERTIES).

RULES ALSO SAID NO PROBLEM, BUT I DECIDED THAT IT WOULD BE WISE TO CHECK WITH ETHICS ALSO.

I STILL THINK THAT WE WOULD WISE TO GET THE PARTNERSHIP ACCOUNT UP AND RUNNING. IT JUST LOOKS BETTER.

RECEIVED
FEB 20 1985
CURTIN, MAHONEY & CAIRNS
A PROFESSIONAL ASSOCIATION

UNITED STATES SENATE
WASHINGTON, D.C. 20510

DAVE DURENBERGER
MINNESOTA

February 15, 1985

Michael Mahoney, Esq.
Curtin, Mahoney & Cairns
4150 Multifoods Tower
Minneapolis, MN 55402

Dear Mike:

At the direction of Senator Durenberger I am forwarding to you the upcoming invitations that have been accepted on his behalf. These invitations were accepted prior to the agreement between the Senator and his publisher; therefore, the honoraria agreed upon is $2,000 or less, the limit allowed by the U.S. Senate.

Each invitation is marked with the date of the event and the honoraria. Senator Durenberger's staff will coordinate the details of the scheduling the event, including the timing, transportation and other details pertaining to the Senator's participation.

In accordance with the contract between the Senator and his publisher, it is my understanding that Curtin, Mahoney & Cairns, acting as an agent of the publisher, will negotiate the fee, collect the fee and arrange for payment by the publisher to the Senator.

On future scheduling events the staff will not be involved in any compensation connected with an event. We will coordinate with you or another agent of the publisher on scheduling the Senator for events connected with the promotion of his books.

Sincerely,

Thomas F. Horner
Administrative Assistant to
Senator Dave Durenberger

enclosures

AFFIDAVIT OF RANDALL E. JOHNSON

RANDALL E. JOHNSON, being sworn, deposes and says:

1. I am an attorney licensed to practice law in the State of Minnesota. I became a County Commissioner for Hennepin County, Minnesota in 1979. I make this affidavit in connection with the current proceedings before the United States Senate Select Committee on Ethics involving Senator David F. Durenberger.

2. I have known Senator Durenberger since 1964 or 1965. I served as the Senator's campaign attorney when he ran for the U.S. Senate in 1978 and again when he ran for re-election in 1982.

3. Through several discussions with members of Senator Durenberger's staff in early 1983, I was told that the Senator and another individual, Roger Scherer, were considering exchanging their condominium units. I was asked if I could arrange for the recording of the deeds for this exchange and I agreed to do so. I was also asked about the Senator's possible change of residence to Avon, Minnesota and possible reimbursement for nights he would spend at the condominium.

4. In June 1983, in response to questions from Gene Holderness and Tom Horner, I sent a June 28, 1983 letter to the Senator advising that he could minimize any possible concern

about receiving reimbursement out of Senate funds for nights spent at the condominium he was going to rent if:

(a) he listed and sold his newly acquired condominium unit within a reasonable time and

(b) he changed his legal and voting residence to somewhere outside the Twin Cities area, such as his parents' home in Avon, Minnesota, which was perfectly acceptable under Minnesota law.

(*See* Attachment 1.)

5. I subsequently was advised that, rather than an exchange, Senator Durenberger's condominium and the one owned by Mr. Scherer would be placed in a partnership between them, and that Senator Durenberger would rent the condominium he had owned from the partnership. I suggested that an attorney who had more time and experience in partnership and tax matters should be consulted, and I eventually sent the material I had to Richard Langlais, a tax lawyer, on or about October 18, 1983.

6. When I learned in December 1983 that Senator Durenberger's condominium documentation still had not been completed, I wrote him a December 29, 1983 letter urging that it be done. In this letter, I advised that, under the Senate Rules, I believed he could claim reimbursement for official business stays at the condominium that he rented from the partnership. I

also said that the paperwork for the transaction should be completed and dated before August 1, reflecting the oral agreement between the Senator and Mr. Scherer. (See Attachment 2.)

7. In February 1984, I received paperwork for the partnership that had been signed by Senator Durenberger and Mr. Scherer. I reviewed the agreement and, recognizing their signatures, notarized certain documents, including quit claim deeds, using the effective date of the partnership, July 28, 1983. The Senator was not present when I affixed the notary. I had no conversation with the Senator about the notarization date nor did he in any way request that date.

8. I had no further involvement with the Senator's condominium arrangements after I notarized the paperwork in 1984.

9. The legal and other work I performed regarding this matter was all performed in good faith. I gave Senator Durenberger my best advice, based on my knowledge of the facts and the law. To the best of my knowledge and belief, Senator Durenberger also acted in good faith in this transaction.

10. I had no intent and did not attempt to mislead the Senate in regard to this transaction and the subsequent reimbursements. To the best of my knowledge and belief, neither did Senator Durenberger. The intent was to obtain for him the reimbursement to which he was legally entitled. I believed that the legal papers I notarized were prepared to record and reduce to writing an arrangement that had been previously reached. The

partnership agreement expressly made this representation. There was no effort of which I am aware to backdate documents in any unlawful manner to deceive the Senate or to receive reimbursements.

Dated this 7 th day of June, 1990.

Randall E. Johnson

SUBSCRIBED AND SWORN to before me this 7 th day of June, 1990, by Randall E. Johnson.

NOTARY PUBLIC

JULIE A. BRAMMER
NOTARY PUBLIC—MINNESOTA
HENNEPIN COUNTY
My Commission Expires Sept. 6, 1994

My commission expires:

RANDALL E. JOHNSON
Attorney-at-Law
3700 W. 104th STREET
BLOOMINGTON, MINNESOTA 55431
(612) 835-2651

ADMITTED IN
MINNESOTA AND
DISTRICT OF COLUMBIA

June 28, 1983

The Honorable Dave Durenberger
353 Russell Senate Office Building
Washington, D.C. 20510

Dear Senator:

Gene Holderness and Roger Sherer have talked to me about the proposed transactions involving the condominium. I told them that I am ready to proceed with the papers as soon as you give the word. In order to minimize any possible concern about receiving reimbursement out of Senate funds for nights spent at the condominium, I believe it is important for you to list your new unit immediately and sell it within a reasonable period of time. You will have to change your legal and voting residence to somewhere outside the Twin Cities area. I think Gene suggested that you will probably use your parents' address, which is perfectly acceptable under Minnesota law.

Continued...

Attachment 1

Please call me if you have any questions.

Very truly yours,

Randall E. Johnson
Attorney-at-Law

REJ/lw/A030
Enclosures

RANDALL E. JOHNSON
Attorney-at-Law
3700 W 104th STREET
BLOOMINGTON, MINNESOTA 55431
(612) 835-2651

ADMITTED IN
MINNESOTA AND
DISTRICT OF COLUMBIA

December 29, 1983

The Honorable Dave Durenberger
1020 Plymouth Building
12 South Sixth Street
Minneapolis, MN 55402

PRIVILEGED & CONFIDENTIAL

Dear Dave:

This letter addresses a number of matters -- legal, political and personal.

1. Enclosed is the bill for $63.75 for my out-of-pocket expenses in connection with obtaining a duplicate Certificate of Title for your condominium. As I told Lori Krage, if you write the check before the end of this year and if you go ahead with the transaction with Roger Scherer, this is deductible for 1983 as a business expense. It is not a campaign expense.

2. It is important that you conclude the condominium transaction in order to justify the per diem reimbursement you received during the August recess. As I mentioned to you before, I believe the straight exchange with Roger bears some risk of being disallowed by the Internal Revenue Service. I am more concerned about the partnership transaction and the allocations proposed by Dick Langlais, but he is your income tax specialist. In any event, from the standpoint of Senate Rules and IRS Regulations, I believe you can claim the per diem reimbursement -- but the paperwork on this should be completed immediately if you have not done so already. Everything should be dated before August 1st, reflecting the oral agreement between you and Roger.

3.

Attachment 2

Best wishes for a happy new year.

Very truly yours,

Randall E. Johnson
Attorney-at-Law

REJ/lw/A085

RANDALL E. JOHNSON
Attorney-at-Law
3700 W. 104th STREET
BLOOMINGTON, MINNESOTA 55431
(612) 835-2651

ADMITTED IN
MINNESOTA AND
DISTRICT OF COLUMBIA

June 26, 1983

The Honorable Dave Durenberger
353 Russell Senate Office Building
Washington, D.C. 20510

Dear Senator:

Gene Holderness and Roger Sherer have talked to me about the proposed transactions involving the condominium. I told them that I am ready to proceed with the papers as soon as you give the word. In order to minimize any possible concern about receiving reimbursement out of Senate funds for nights spent at the condominium, I believe it is important for you to list your new unit immediately and sell it within a reasonable period of time. You will have to change your legal and voting residence to somewhere outside the Twin Cities area. I think Gene suggested that you will probably use your parents' address, which is perfectly acceptable under Minnesota law.

Continued...

Please call me if you have any questions.

Very truly yours,

Randall E. Johnson
Attorney-at-Law

REJ/lw#A030
Enclosures

RANDALL E. JOHNSON
Attorney-at-Law
3700 W. 104th STREET
BLOOMINGTON, MINNESOTA 55431
(612) 835-2651

ADMITTED IN
MINNESOTA AND
DISTRICT OF COLUMBIA

December 29, 1983

PRIVILEGED & CONFIDENTIAL

The Honorable Dave Durenberger
1020 Plymouth Building
12 South Sixth Street
Minneapolis, MN 55402

Dear Dave:

This letter addresses a number of matters -- legal, political and personal.

1. Enclosed is the bill for $63.75 for my out-of-pocket expenses in connection with obtaining a duplicate Certificate of Title for your condominium. As I told Lori Krage, if you write the check before the end of this year and if you go ahead with the transaction with Roger Scherer, this is deductible for 1983 as a business expense. It is not a campaign expense.

2. It is important that you conclude the condominium transaction in order to justify the per diem reimbursement you received during the August recess. As I mentioned to you before, I believe the straight exchange with Roger bears some risk of being disallowed by the Internal Revenue Service. I am more concerned about the partnership transaction and the allocations proposed by Dick Langlais, but he is your income tax specialist. In any event, from the standpoint of Senate Rules and IRS Regulations, I believe you can claim the per diem reimbursement -- but the paperwork on this should be completed immediately if you have not done so already. Everything should be dated before August 1st, reflecting the oral agreement between you and Roger.

4.

Best wishes for a happy new year.

Very truly yours,

Randy

Randall E. Johnson
Attorney-at-Law

REJ/lw/A085

AFFIDAVIT

I, CHARLES KAHN, III, being duly sworn, do depose and state as follows:

1. I served as Senator David Durenberger's Legislative Assistant for health policy from the summer of 1984 through the summer of 1986. Currently, I am a staff member of the House Ways and Means Committee. My office address is 1106 Longworth Building, Washington, D.C. 20515.

2. At about the time I started working for Senator Durenberger, William Swanson was hired to prepare a manuscript of a book on health care with Senator Durenberger. As an incidental matter, I was asked to provide background materials and information to Mr. Swanson for use in development of the manuscript. In this regard, I met with Mr Swanson on a few occasions to discuss the manuscript.

3. At some point after I joined the Senator's staff, I learned about the Senator's arrangement with the publisher of his books, Piranha Press, although I was not aware of the specific terms of that arrangement. I knew that the Senator had written a book on defense policy and was planning to write a book on health policy when I joined the staff.

4. I recall having been told that the Senator received a letter from the Federal Election Commission which sanctioned his arrangement with Piranha Press. From a purely political perspective, I was concerned about the public appearance if the income from book promotions was more than the honoraria limitations, although I assumed it was "o.k." from a legal perspective.

5. As the Senator's health aide, I frequently was the first person on the staff to receive invitations for him to appear before health care organizations. I also generally reviewed the invitations from such organizations that the Senator received directly. I do not recall any group inviting the Senator to promote his book(s). I made recommendations as to whether or not the Senator should accept invitations to health related events. My role also included assessing the amount specific groups were able to pay for his appearance. I gave these recommendations to the Senator's Administrative

SPECIAL
COUNSEL
HEARING
EX. 42

Durenberger Exhibit 1C

Assistant, Douglas Kelley, and/or the scheduler. It is my understanding that this information was passed along to Michael Mahoney, who handled the promotional appearances for Piranha Press.

6. I was not aware of the criteria used to differentiate an appearance for which the Senator received honorarium and the promotional appearances for the Piranha Press publications. However, I did know that fees in excess of $2,000 were sometimes paid for the promotions of the Piranha Press books.

7. I was aware that Mr. Mahoney negotiated the terms of the Senator's Piranha Press promotional appearances. On occasion groups called me after being contacted by Mr. Mahoney to inquire about the Piranha Press arrangement. I explained to these groups that Mr. Mahoney was the counsel to Piranha Press and arranged the promotional appearances related to the books for the Senator.

8. On a few occasions, I received complaints from lobbyists concerning the "heavy handedness" Mr. Mahoney used in negotiating the Senator's book promotions, and specifically about his efforts to negotiate for the highest promotional fee possible for the organizations in question. I recall discussing this issue with Michael Bromberg, Executive Director of the Federation of American Health Systems. I spoke with Mr. Mahoney about these complaints. In addition, I mentioned the complaints to Mr. Kelley and may have discussed the subject with the Senator.

9. I sometimes accompanied the Senator to his health care speeches. I recall that the Senator's driver, Jim Roan, had copies of the Senator's books in the car used to drive to the appearance. I do remember the Senator's books were sometimes displayed at these appearances. Until the health book was completed, I remember at certain appearances the Senator saying he had written a book on defense policy which his publisher was offering for sale and was in the process of writing a book on health policy. I also specifically recall the Senator holding up a book at certain

appearances I attended. I do not recall his remarks from most of the appearances I attended. Generally, he mentioned the books and then went on to talk about broader subjects. I remember the Senator discussing the availability of the books for sale but I do not remember whether or not books were actually sold at the appearances I attended.

10. For many reasons, it was felt important to publish the health book. These reasons included the Senator's intent to make his mark on health policy, his desire to follow the defense book with another book. and the fact that the Senator had stated publicly that he was working on a health book.

11. Mr. Swanson produced a partial manuscript for a health care book. The manuscript, however, as far as I know was never completed. Shortly after Mr. Swanson withdrew from the project, I remember the Senator dictated material for the book which I sometimes reviewed. These efforts similarly did not result in the health care book which was finally published but probably served as the basis for the material in the final product. As far as I understand, John Schraeder was hired to compile and edit the Senator's speeches, record statements and other materials on health care for the book which was finally published. I remember sending Mr. Schraeder materials to assist him in preparing the book for publication.

12. One of my regular duties on the Senator's staff was to help keep his schedule full with health related meetings and events when he traveled outside of Washington. I performed this function in connection with a few of his trips to the Boston area. I was asked to arrange engagements for the Senator on specific dates supplied by the Senator's scheduler.

13. I arranged a number of meetings and appearances for the Senator in the Boston area. Among those, I believe was an appearance at New England Life Insurance Company. I do remember discussing such an event with Gordon MacKay of that firm and on other occasions discussed setting

up appearances in the Boston area with Mr. MacKay. Also during this period I arranged for meetings for the Senator with faculty at Brandeis and Harvard as well as a visit with the editor of the New England Journal of Medicine.

14. I was asked to set up health related meetings and appearances for the Senator in connection with trips that had been scheduled to the Boston area. I later learned that he had regular meetings during these trips with Dr. Armand Nicholi.

15. I was asked in relation to appearances that I arranged in Boston to request the hosts cover the Senator's expenses related to the trips.

CHARLES KAHN, III
N.

SUBSCRIBED AND SWORN to before me this [illegible] day of March, 1990.

[illegible]
Notary Public [illegible]

[SEAL]

My Commission Expires: [illegible]

AFFIDAVIT OF DOUGLAS A. KELLEY

STATE OF MINNESOTA)
) ss.
COUNTY OF HENNEPIN)

DOUGLAS A. KELLEY, being sworn, deposes and says:

1. I am a partner with the law firm of Mahoney Walling & Kelley, Professional Association, in Minneapolis, Minnesota. I am also a former Assistant United States Attorney. I make this affidavit in connection with the current proceedings before the United States Senate Select Committee on Ethics involving Senator David F. Durenberger.

2. I served as Senator Durenberger's Administrative Assistant from July 1985 through April 1989. I resigned from that position to return to Minnesota to run for Governor.

3. Shortly after I joined Senator Durenberger's staff, he informed me that he had a contract with his publisher, Piranha Press, pursuant to which he made appearances for which he was compensated by Piranha. The Senator's attorney, Michael Mahoney, explained to me that they had obtained an advisory opinion from the Federal Election Commission that the income the Senator received from Piranha was a stipend and not honoraria and thus was not subject to the statutory limitations on honoraria. At my request, Mr. Mahoney sent me copies of the request for the advisory opinion submitted to the FEC, the FEC's response and the Senator's contract with Piranha Press.

Exhibit 11

4. On or about February 25, 1986, I met with William Canfield, then a staff attorney for the Senate Select Committee on Ethics, regarding disclosure of outside income. I informed Mr. Canfield that, at the inception of the Piranha Press contract, Senator Durenberger had spoken with Clendon Lee, another staff attorney for the Ethics Committee, and had run the details of the Piranha Press agreement by him for his approval. Mr. Canfield remembered that Mr. Lee had discussed the issue with other staff attorneys, including himself, at the time. Mr. Canfield was aware that the FEC subsequently had issued an opinion stating that the income from Piranha Press would be considered a stipend rather than honoraria.

5. I asked Mr. Canfield whether a formal opinion should be requested from the Ethics Committee. Mr. Canfield responded that an Ethics Committee opinion would be unnecessary because the FEC's determination that the income would be stipendiary in nature was dispositive of the issue. I prepared a contemporaneous memorandum of my conversation with Mr. Canfield, which is appended hereto as Attachment 1.

6. At the time I joined Senator Durenberger's staff and through the end of the Piranha Press contract period, some requests for speech appearances that came into the Senator's office were referred to Piranha Press. These particular requests were forwarded to Mr. Mahoney, who contacted some of the requesting organizations. I believed from the outset that this conduct was appropriate and within the coverage of the FEC opinion. At no time did I question the validity of the FEC opinion.

7. However, I did advise Senator Durenberger not to continue the arrangement with Piranha Press. This advice was not based on any concerns about the legality of the arrangement. My concerns related to the time spent on speeches, efficient management of the office, some adverse publicity, and similar considerations. The contract terminated by its own terms in December 1986.

8. To the best of my knowledge and belief, Senator Durenberger at all times acted in good faith and in reliance upon the FEC opinion, the advice received from the Ethics Committee staff, and the advice of counsel. I am confident that Senator Durenberger had no intent to circumvent the honorarium limitations in an unlawful manner.

9. I first became involved in Senator Durenberger's condominium arrangements in the fall of 1986 when Roger Scherer decided he wanted to leave the partnership that owned their two condominiums. The Senator and I had discussions with Michael Mahoney regarding the Senator's ability to continue claiming reimbursement if the partnership ended.

10. The Senator, Mr. Mahoney, and I concluded that after Roger Scherer took back his condo, the Senator should not receive Senate reimbursement unless the Senator sold the condominium to a third party. Jeff Robbins, an attorney in the Mahoney law firm, gave an opinion that Roger Scherer's leaving would not affect reimbursement for the Senator's official business stays in the condominium.

11. I believe that in late 1986 or early 1987 Senator Durenberger reached an oral agreement with Paul Overgaard regarding the purchase of

condominium no. 603. The paperwork was not completed at the time the agreement was reached. The sale to Mr. Overgaard's company, Independent Service Company, was made effective as of April 1, 1987.

12. The delay in submitting bills for condominium rents to the Senate for the period April-October 1987 was primarily my responsibility. I told Senator Durenberger that I would not submit reimbursement vouchers for official business stays in the condominium until the effective date of the transaction was clear.

13. When I was satisfied as to the date the sale to Mr. Overgaard's company was effective, I instructed Heidi Shaw to submit the appropriate rental bills and reimbursement vouchers.

14. In my opinion, the sale to Paul Overgaard's company was a legitimate transaction, and not a sham. Mr. Overgaard made a down payment on the property and paid expenses connected with it; Senator Durenberger paid rent to ISC. I would not have involved myself in any transaction that was not appropriate according to Senate rules. I believed there was an oral contract of sale with ISC as of April 1, 1987, and that Senator Durenberger was entitled to claim reimbursement from the Senate for rents paid to ISC for periods beginning on that date. The sale documents that were drafted at a later time reflect this effective date. There was no

attempt on the Senator's part or my part to seek reimbursement from the Senate to which the Senator was not legally entitled.

Dated this 8 th day of June, 1990.

Douglas A. Kelley

Douglas A. Kelley

Subscribed and sworn to before me this 8 th day of June, 1990, by Douglas A. Kelley.

Tamara K. Hardy

Notary Public

My Commission expires: ____________

TAMARA K. HARDY
NOTARY PUBLIC — MINNESOTA
HENNEPIN COUNTY
My Commission Expires Aug. 27, 1992

MEMORANDUM

TO: Senator Durenberger
FR: Douglas A. Kelley
DATE: February 25, 1986
RE: Meeting with Bill Canfield, Senate Select Committee on Ethics

I visited with Bill Canfield, staff attorney, Senate Select Committee on Ethics today concerning our disclosure of outside income. I informed Canfield that at the time of the inception of Piranha Press you had had a conversation with Clendon Lee and had run the details of Piranha Press by him for his approval. Canfield remembered the conversation you had with Lee because Lee had discussed the issue with Canfield and other staff lawyers at that time. Lee, as you told me, found no problems with the arrangement from the Ethics Committee viewpoint. Canfield was also aware that the Federal Election Commission had subsequently issued an opinion stating that the income from Piranha Press would be considered to be a stipend rather than honoraria.

I asked Canfield whether any follow-up should be made to the Clendon Lee conversation or whether we should request a formal opinion from the Ethics Committee. Canfield informed me that an opinion would be an unnecessary redundancy because the FEC's determination that the income would be stipendiary in nature was dispositive of the issue. Canfield said the FEC was the proper forum to interpret the Federal Campaign Practices Act and that the only concern the Ethics Committee had was whether or not the income derived from the arrangement would be reported as required by Title 2 United States Codes, Section 441(i).

Canfield also informed me that neither Cohen, Hart, nor Moynihan had requested opinions on the income derived from any of their recently published books.

cc: Michael Mahoney

PC Wilson Abney 6/13/88 Read above memo to WA to forewarn him of press calls. WA said FEC has juris on Title 441i ($2k limit) and SSCE has juris on 2 USC 31-1 (40% limit). WA informed me that he would not respond to press inquiries re arrangement. DK

PC Bill Canfield 6/13/88 Read above memo to BC for accuracy. He said it accurately reflected our conversations. DK

AFFIDAVIT OF RICHARD J. LANGLAIS

RICHARD J. LANGLAIS, being sworn, deposes and says:

1. I have practiced law in Minnesota since 1964. My specialty is tax law. I make this affidavit in connection with the current proceedings before the United States Senate Select Committee on Ethics involving Senator David F. Durenberger.

2. In 1983, I prepared Senator Durenberger's tax returns for the calendar year 1982. I had prepared Senator Durenberger's tax returns for many years prior thereto.

3. Senator Durenberger contacted me in the summer of 1983 seeking tax advice regarding a proposed exchange of condominiums with Roger Scherer. I concluded that this arrangement would entail adverse tax consequences and instead recommended the formation of a partnership between the Senator and Mr. Scherer to which their condominiums would be transferred.

4. Subsequently in July 1983, I was told that the partnership transaction had been chosen and was asked to draft an agreement. My records disclose that, on October 26, 1983, I asked Donald Lattimore, an attorney in my firm, to start the work on the written agreement. Although I was not asked to advise on issues relating to per diem reimbursement from the United States Senate, I understood that Senator Durenberger planned to rent the condominium he had owned from the partnership and to seek Senate reimbursement for official business stays at the condominium.

5. The written partnership agreement was not completed until December, 1983, at which time the document was delivered to Senator Durenberger's Minneapolis office. The delay was occasioned by my need to have sufficient time to study proposed regulations issued under Section 704(b) of the Internal Revenue Code. These regulations related to special allocations of income and expense of a partnership which significantly impacted the partnership agreement. I do not recall advising Senator Durenberger of the

Exhibit 12

reasons for the delay in drafting the written partnership agreement. Senator Durenberger had wanted the document much earlier and was displeased.

6. In January, 1984, I received a letter from Senator Durenberger thanking me for my efforts and informing me that he had decided to use an agreement drafted by the Curtin, Mahoney firm. He also informed me that Mr. Mahoney's firm would prepare his 1983 taxes. I have not done any tax or legal work for him since that time.

7. The partnership agreement drafted by my firm stated that it recorded and expanded upon the agreement reached between Senator Durenberger and Mr. Scherer on July 28, 1983. (See Att. 1.) This document was prepared by us in good faith to reflect the situation as we understood it.

8. To the best of my knowledge and belief, Senator Durenberger sought my advice and assistance in good faith and had no intent to deceive the Senate or to obtain reimbursements from the Senate in an unlawful manner.

Dated this 6th day of June, 1990.

Richard J. Langlais

SUBSCRIBED AND SWORN to before me this 6th day of June, 1990, by Richard J. Langlais.

PEGGY C. MAGEE
Notary Public-Minnesota
Washington County
My Comm. Exp. 9-12-95

Peggy C Magee
Notary Public

My commission expires: 9/12/95

LANGLAIS, SMITH, MOONEY, GILBERT & LATTIMORE
PROFESSIONAL ASSOCIATION
ATTORNEYS AT LAW
2620 AMERICAN NATIONAL BANK BUILDING
FIFTH AND MINNESOTA STREETS
ST. PAUL, MINNESOTA 55101

RICHARD J. LANGLAIS
TERRY C. SMITH
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JOHN S. GILBERT
DON M. LATTIMORE

OF COUNSEL
LAURENCE F. ROLL
KENNETH E. MCCOY

TELEPHONE 291-9155
AREA CODE 612

December 30, 1983

Senator David F. Durenberger
1020 Plymouth Building
12 South Sixth Street
Minneapolis, Minnesota 55402

Re: Durenberger-Scherer Partnership

Dear Senator Durenberger:

Enclosed herewith please find an original and one copy of the proposed Durenberger-Scherer Partnership Agreement. This Agreement ✓ is the same as the Agreement previously forwarded to you except for certain modifications made on page 1 of the Agreement. I have enclosed herewith a copy of page 1 of the previous Agreement and highlighted the areas that have been changed.

Thank you.

Very truly yours,

LANGLAIS, SMITH, MOONEY, GILBERT & LATTIMORE
Professional Association

Don M. Lattimore
Don M. Lattimore

DML:lmr

Encs.

SPECIAL
COUNSEL
HEARING
EX. 311

1983 DEC 30

PARTNERSHIP AGREEMENT
OF
DURENBERGER - SCHERER PARTNERSHIP,
a Minnesota Partnership

This Partnership Agreement made effective the 28th day of July, 1983, and made between David F. Durenberger ("Durenberger") and Roger H. Scherer ("Scherer").

WHEREAS, Durenberger owns a condominium described as Apartment #603, 1225 LaSalle Avenue, Minneapolis, Minnesota; and

WHEREAS, Scherer owns a condominium described as Apartment #703, 1225 LaSalle Avenue, Minneapolis, Minnesota; and

WHEREAS, the parties entered into an oral agreement on or about the 28th day of July, 1983, regarding the leasing of 603 and 703; and

WHEREAS, pursuant to said oral agreement, a partnership was formed and began business on July 28, 1983; and

WHEREAS, said oral partnership agreement was not definitive of all rights and obligations of the parties; and

WHEREAS, the parties agreed that the then existing oral partnership agreement be amended to provide further definition of the rights and obligations of the parties and be reduced to writing; ______________________________ .

NOW THEREFORE, THIS AGREEMENT WITNESSETH THAT IN CONSIDERATION of the covenants and agreements contained in this Agreement the parties agree as follows:

ARTICLE 1
INTERPRETATION

DEFINITIONS

1.1 In this Agreement, unless the context otherwise requires:

(a) "Capital" means the aggregate capital contributed by the Partners to the Partnership.

(b) "Code" means the Internal Revenue Code of 1954, as amended and as may be amended from time to time;

PARTNERSHIP AGREEMENT
OF
DURENBERGER - SCHERER PARTNERSHIP,
a Minnesota Partnership

This Partnership Agreement made effective the 28th day of July, 1983, and made between David F. Durenberger ("Durenberger") and Roger H. Scherer ("Scherer").

WHEREAS, Durenberger owns a condominium described as Apartment #603, 1225 LaSalle Avenue, Minneapolis, Minnesota; and

WHEREAS, Scherer owns a condominium described as Apartment #703, 1225 LaSalle Avenue, Minneapolis, Minnesota; and

WHEREAS, the parties entered into an oral agreement on or about the 28th day of July, 1983, regarding the sharing of profits of 603 and 703; and

WHEREAS, pursuant to said oral agreement, the parties agreed to share and specially allocate profits beginning July 28, 1983; and

WHEREAS~~, said oral agreement~~ was not definitive of all rights and obligations of the parties; and

WHEREAS, the parties now agree that the existing oral partnership agreement be amended to provide further definition of the rights and obligations of the parties and be reduced to writing, and that the title to the properties be conveyed to this Partnership;

NOW THEREFORE, THIS AGREEMENT WITNESSETH THAT IN CONSIDERATION of the covenants and agreements contained in this Agreement the parties agree as follows:

ARTICLE 1
INTERPRETATION

DEFINITIONS

1.1 In this Agreement, unless the context otherwise requires:

(a) "Capital" means the aggregate capital contributed by the Partners to the Partnership.

(b) "Code" means the Internal Revenue Code of 1954, as amended and as may be amended from time to time;

(c) "Fiscal Period" means the fiscal period of the Partnership as provided for in section 2.4;

(d) "Property" means the condominium apartments 603 and 703 located at 1225 LaSalle Avenue, Minneapolis, Minnesota;

(e) "603" means that part of the Property constituting Apartment 603;

(f) "703" means that part of the Property constituting Apartment 703;

(g) "Partnership" means this Partnership organized under the laws of the State of Minnesota;

(h) "Sale" means the sale of the Property or any part thereof or interest therein, the receipt of compensation for the expropriation or condemnation of or injury to the Property or any part thereof or interest therein or the recovery of damage awards or insurance proceeds (other than business or interruption insurance proceeds) in respect thereof;

(i) "Taxable Income or Loss" in respect of any Fiscal Period means the amount of income or loss of the Partnership for such period as reported for Federal income tax purposes, excluding the amount of any gain or loss from the disposition of the Property;

(j) "Cash Flow" means Taxable Income before allowances for depreciation or amortization and other non-cash expenses less payments of principal on outstanding indebtedness and for capital improvements.

INTERPRETATION

1.2 For all purposes of this Agreement, except as otherwise expressly provided or unless the context otherwise requires:

(a) "this Agreement" means this Partnership Agreement as it may from time to time be supplemented or amended;

(b) the headings are for convenience only and do not form a part of this Agreement nor are they intended to interpret, define or limit the scope, extent or intent of this Agreement or any provisions hereof;

(c) all accounting terms not otherwise defined herein have the meanings assigned to them by, and all computations made pursuant to this Agreement, except as expressly provided otherwise, shall be made in accordance with, generally accepted accounting principles;

(d) any reference to a statute shall include and shall be deemed to be a reference to such statute and to the regulations made pursuant thereto, with all amendments made thereto and in force from time to time, and to any statute or regulation that may be passed which has the effect of supplementing or superseding the statute so referred to or the regulations made pursuant thereto;

ARTICLE II

RELATIONSHIP BETWEEN PARTNERS

2.1 Formation of Partnership. Durenberger and Scherer have heretofore formed a Partnership as a Minnesota partnership which Partnership shall hereafter continue pursuant to this Agreement. The Partnership shall carry on business under the name "Durenberger - Scherer Partnership" or such other name or names as the partners may determine from time to time.

2.2 Business of the Partnership. The Partnership shall carry on the business of leasing 603 and 703.

2.3 Principal Place of Business. The principal place of business of the Partnership shall be at 1225 LaSalle Avenue, Minneapolis, Minnesota, or such other place or places as may be determined by the Partners.

2.4 Fiscal Period. The first fiscal period of the Partnership shall end on December 31 of each calendar year.

2.5 Limitation on Authority of Partners.

No Partner shall, without the consent of the other Partner:

(a) execute any document which binds or purports to bind the Partnership or any Partner;

(b) hold himself out as having the power or authority to bind the Partnership or any Partner as such;

(c) undertake any obligation or responsibility on behalf of the Partnership;

(d) bring any action for partition or sale in connection with the Property or other assets of the Partnership, whether real or personal, or register or permit any lien or charge in respect of the Property; or

(e) compel a partition, judicial or otherwise, of any of the assets of the Partnership distributed to the Partners in kind.

2.6 Unlimited Liability of Partners. The Partners shall be jointly and severally liable for the debts, liabilities and obligations of the Partnership to the extent required by law. However, no Partner shall be liable, responsible or accountable in damages or otherwise to the Partnership or to the other Partner for any act performed in good faith within the scope of this Agreement in connection with the affairs of the Partnership, except with respect to any fraud, intentional misconduct, gross negligence or breach of any fiduciary duty or covenant contained in this Agreement.

ARTICLE III

CAPITAL CONTRIBUTIONS AND ACCOUNTS

3.1 Capital Contribution by Partners. The capital of the Partnership is as follows as of the date of this Agreement:

(a) 603, as described in Schedule A attached to this Agreement, contributed by Durenberger.

(b) 703, as described in Schedule B attached to this Agreement, contributed by Scherer.

The present value of 603 is $63,000. The adjusted tax basis of 603, as of the date of this Agreement, is set forth in Schedule A.

The present value of 703 is $63,000. The adjusted tax basis of 703, as of the date of this Agreement, is set forth in Schedule B.

3.2 Additional Contributions to Capital by Partners. No Partner shall be required to make any additional contributions to the capital of the Partnership except as follows:

(a) Any Partner who has a negative balance in his capital account, after application of Article V, shall be required to contribute to the Partnership an amount of cash sufficient to raise such balance to zero.

(b) Durenberger shall contribute to the Partnership any deficit cash flow resulting from the operation of 703.

(c) Scherer shall contribute to the Partnership any deficit cash flow resulting from the operation of 603.

3.3 Capital Accounts. A separate capital account shall be maintained by the Partnership for each Partner in accordance with sound tax accounting principles as required by the Code. The such hypothetical sales shall be made subsequent to any adjustments to capital account balances resulting from actual sales, exchanges, or other dispositions of property made pursuant to dissolution.

3.4 Creditor's Interest in Partnership. No creditor who makes a nonrecourse loan to the Partnership shall have or acquire, at any time as a result of making the loan, any direct or indirect interest in the profits, capital or property of the Partnership other than as a secured creditor, notwithstanding any other provisions in this Agreement.

ARTICLE IV

TERM

4.1 Term of Partnership. The Partnership shall terminate on Thirty (30) days written notice by either Partner to the other, unless otherwise terminated pursuant to this Agreement.

ARTICLE V

DISTRIBUTIONS AND ALLOCATIONS

5.1 Cash Flow Distributions. The Partnership shall distribute to the Partners the cash flow of the Partnership within a reasonable time after the end of each quarter period during the Fiscal Period, except, however, the Partnership may retain such amounts as it deems reasonable in order to provide for any reasonably anticipated expenditures or liabilities of the Partnership, including, without limitation, reserves for replacement and capital improvements and debt service for which adequate provision has not been made. All such distributions to the Partners shall be made as follows: all cash flow resulting from the operation of 703 shall be distributed to Durenberger and all cash flow resulting from the operation of 603 shall be distributed to Scherer. All other cash flow shall be distributed in accordance with the ratio in which each Partner's capital account bears to the total capital accounts of the Partnership.

5.2 Distributions of Net Proceeds. Any net proceeds from insurance, condemnation or sale of any of the assets of the Partnership shall be distributed to the Partners in the same manner as Cash Flow Distributions.

5.3 Distributions from Refinancing Proceeds. Any net proceeds from refinancing shall be distributed to the Partners in the same manner as Cash Flow Distributions.

5.4 Distributions Upon Liquidation. Distributions in liquidation of the Partnership shall be made in accordance with Article VII.

5.5 Allocation of Taxable Income or Loss. Taxable income or loss shall be allocated to each Partner as follows:

(a) All such income or loss before depreciation resulting from the operation of 703 shall be allocated to Durenberger;

(b) All such income or loss before depreciation resulting from the operation of 603 shall be allocated to Scherer;

(c) All depreciation with respect to 603 shall be allocated to Durenberger and all depreciation with respect to 703 shall be allocated to Scherer;

(d) All other income or loss shall be allocated in the ratio in which each Partner's capital account, immediately prior to such allocation, bears to the total capital accounts of the Partnership at such time.

(e) Should any fees or other compensation paid or accrued to any Partner (and deducted by the Partnership in reliance on Section 707(a) and/or 707(c) of the Code) be disallowed as deductions and treated as Partnership distributions, the Partnership shall allocate to such Partner items of Gross Income (as defined in the Code) in the Fiscal Period such fees or other compensation which were deducted in computing Taxable Income or Loss in an amount equal to the amount of any fees or other compensation disallowed.

(f) Should the allocation of any item of loss or deduction exceed the tax basis, as determined under the Code, of any Partner's interest in the Partnership, the amount of such item of loss or deduction which is in excess of such tax basis shall not be allocated to such Partner but shall be allocated to the other Partner.

(g) Should the allocation of any item of loss or deduction attributable to nonrecourse debts secured by the Property cause the sum of the negative capital account balances of the Partner or Partners receiving such allocation to exceed an amount equal to the "minimum gain" (as that term is defined in Proposed Treasury Regulation 1.704-1(b)(4)(iv) or its successor regulation) that would be realized upon foreclosure of the Property, no items of loss or deduction attributable to such nonrecourse debts shall be allocated to any Partner whose capital account is negative if the effect of such allocation would be to cause such negative capital account to exceed the amount of gain recognized upon such foreclosure. Any such item of loss or deduction not allocated to a Partner shall be allocated to the other Partner. Notwithstanding the foregoing, if at any time a Partner's negative capital account exceeds such excess, that Partner shall thereafter be allocated items of Gross Income (as defined in the Code) which allocations shall coincide, in amount and time, with any principal reduction in the amount of the nonrecourse debt, and which allocations shall not be greater than an amount necessary to cause such negative capital account to exceed the amount of gain which would be recognized upon such foreclosure.

5.6 Allocation of Gain or Loss on Property Disposition. Gains and losses from the sale, exchange or other disposition of Property, whether voluntary or involuntary, shall be allocated as follows:

(a) With respect to 603, gain shall first be allocated to Durenberger up to an amount equal to the difference between $63,000 and the adjusted basis of 603 under the Code at the time of disposition, and the balance of any gain shall be allocated to Scherer. All losses shall be allocated to Durenberger.

(b) With respect to 703, gain shall first be allocated to Scherer up to an amount equal to the difference between $63,000 and the adjusted basis of 703 under the Code at the time of disposition, and the balance of any gain shall be allocated to Durenberger, all losses shall be allocated to Scherer.

(c) All other gains and losses, if any, shall be allocated to each Partner in accordance with the ratio of such Partner's capital account to the total capital accounts of the Partnership.

ARTICLE VI

BOOKS AND RECORDS

6.1 Books of Account. The Partners shall keep and maintain, or cause to be kept and maintained, at a place determined by the Partners, books of account and records of the Partnership.

6.2 Employment of Auditor. The Partners may retain an independent auditor to audit the financial statements of the Partnership, for, and as at the end of, each Fiscal Period.

6.3 Inspection of Books and Records. The Partners may inspect the books and records of the Partnership at any reasonable time for any proper purpose.

ARTICLE VII

DISSOLUTION OF PARTNERSHIP

7.1 The Partnership shall be dissolved on the earliest of:

(a) The expiration of the terms set forth in Section 3.1;

(b) The sale, exchange or other disposition of all or substantially all of the assets of the Partnership;

(c) The final decree of a court that dissolution or liquidation is required under applicable law; or

(d) The death, incompetence, bankruptcy, insolvency or receivership of any one of the Partners.

7.2 Distribution of Proceeds of Liquidation. Notwithstanding any other provision in this Agreement to the contrary, the Partnership shall distribute, in the following order of priority, the Partnership assets and the net proceeds from liquidation of the Partnership (including sale proceeds of the Property) as follows:

(a) To pay the expenses of liquidation and the debts and liabilities of the Partnership to its creditors or to make due provision for payment thereof (including the assumption by a purchaser of the Property of the balance secured by a mortgage charging the Property or any other indebtedness of the Partnership);

(b) To provide reserves the Partnership considers reasonably necessary for any contingent or unforeseen liability or obligation of the Partnership; provided, however, that the foregoing shall not be construed to include any repayment of any Partner's capital contributions or any capital account balance of any Partner;

(c) The remaining assets or proceeds shall be distributed to the Partners in accordance with their capital account balances. All assets shall be valued for this purpose at their fair market value at the time of distribution. Any Partner who has a negative balance in his capital account shall contribute to the Partnership immediately prior to liquidation an amount of cash sufficient to raise such balance to zero.

7.3 Distributions of Property. Each Partner shall have the right to demand and receive a distribution in a form other than cash, but nothing herein shall require a distribution in a form other than cash. In the event any Partner demands a distribution of property, then Durenberger may demand and receive 703 and Scherer may demand and receive 603.

7.4 Termination of Partnership. The Partnership shall terminate when after payment of or due provisions for the payment of all debts, liabilities and obligations of the Partnership to creditors, all of its assets or the net proceeds therefrom have been distributed as provided in this Article 7.

ARTICLE VIII

NOTICES

8.1 Form and Delivery. Any notice, direction or request required or permitted to be given hereunder shall be in writing and shall be given by personal service, telex, telegram or by registered letter, with postage thereon fully prepaid, to be addressed as follows: If to Durenberger, ______________________________

____;

and if to Scherer, ____________________________________

____.

Any notice, direction or request delivered personally or by telex or telegram shall be deemed to have been received by and given to the addressee on the day of delivery. Any notice, direction or request mailed as aforesaid shall be deemed to have been received by and given to the addressee on the third business day following the date of mailing except in the event of a disruption of postal service in which event notice shall be delivered personally or given by telex or telegram.

ARTICLE IX

BANKING

9.1 Banking. All funds of the Partnership shall be deposited in its name in such checking account(s) and in such bank(s) as shall be designated by the Partners. All withdrawals therefrom are to be made upon checks signed by any Partner or by a party or parties designated by a Partner.

ARTICLE X

MISCELLANEOUS

10.1 Governing Law. This Agreement and the application of interpretation hereof shall be governed exclusively by its term and by the laws of the State of Minnesota and each Partner irrevocably submits to the jurisdiction of the court of the State of Minnesota.

10.2 Severability. Each provision of this Agreement is intended to be severable. If any provision hereof is illegal or invalid, such illegality or invalidity shall not affect the validity of the remainder hereof.

10.3 Counterparts. This Agreement may be executed in any number of counterparts with the same effect as if all parties hereto had signed the same document. All counterparts shall be constructed together and shall constitute one and the same agreement.

10.4 Time. Time shall be of the essence hereof.

10.5 Further Assurances. The parties hereto agree to execute and deliver such further and other documents and perform and cause to be performed such further and other acts and things as may be necessary or desirable in order to give full effect to this Agreement and every part thereof.

10.6 Binding Effect. This Agreement shall be binding upon and inure to the benefit of the parties hereto, and, to the extent permitted hereunder, their respective successors and assigns.

10.7 Entirety of Agreement. This Agreement expresses the entire understanding between the partners, and no provision of the within Agreement may be changed, modified, altered or in any form or manner amended, unless such further agreement is committed to writing and signed by all parties as a supplemental agreement. This Agreement shall inure to the benefit of, and be binding upon, the partners and their heirs, executors, administrators and assigns.

David F. Durenberger

Roger H. Scherer

SCHEDULE A

CAPITAL CONTRIBUTION BY DAVID F. DURENBERGER

Condominium Street Address:

Apartment #703, 1225 LaSalle Avenue, Minneapolis, Minnesota

Condominium Legal Description:

Condominium's Fair Market Value:

$63,000.00

David F. Durenberger's Adjusted Tax Basis:

$

SCHEDULE B

CAPITAL CONTRIBUTION BY ROGER H. SCHERER

Condominium Street Address:

Apartment #603, 1225 LaSalle Avenue, Minneapolis, Minnesota

Condominium Legal Description:

Apartment No. 703 and .44% of undivided interest in the common areas and facilities, Apartment Ownership No. 128, The Tower of 1200 On The Mall, 1225 LaSalle Avenue, Minneapolis, Minnesota located upon the following described land:

Tract A, Registered Land Survey No. 1487,

according to the Declaration of Apartment Ownership and attached By-Laws filed as Document No. 1321937 on the 21st day of March, 1979, and the Floor Plans filed as Document No. 1321938 on the 21st day of March, 1979, files of the Registrar of Titles;

each apartment is intended for residential use subject to the provisions as more fully set forth in said Declaration and By-Laws;

subject to the provisions of Minnesota condominium act, Minnesota Statutes 1976, Chapter 515 and acts amendatory thereof;

subject to restrictions, rights and easements granted over common areas and facilities as contained in the Declaration Document No. 1321937.

Condominium's Fair Market Value:

$63,000.00

Roger H. Scherer's Adjusted Tax Basis:

$

LATTIMORE & MOONEY
PROFESSIONAL ASSOCIATION
ATTORNEYS AT LAW
THE SAINT PAUL BUILDING
SUITE 800
6 WEST FIFTH STREET
ST. PAUL, MINNESOTA 55102

THOMAS M. MOONEY
DON M. LATTIMORE

TELEPHONE 297-6400
AREA CODE 612

AFFIDAVIT OF DON M. LATTIMORE

Don M. Lattimore, being first duly sworn, deposes and states:

1. I am a partner in the law firm of Lattimore & Mooney, P.A. in St. Paul, Minnesota. I make this Affidavit in connection with the current proceedings before the United States Select Committee on Ethics involving Senator David F. Durenberger.

2. In 1983, I worked in a law firm with Richard Langlais, the name of which was Langlais, Smith, Mooney Gilbert & Lattimore. I was assigned the task of assisting in the drafting of the partnership agreement between Senator Durenberger and Roger Scherer and preparing deeds to transfer their condominiums to the partnership. During this time, my only direct contact was with Mr. Langlais.

3. The partnership agreement I assisted in drafting recorded and expanded upon an agreement that I understood had been reached between the Senator and Mr. Scherer in July, 1983.

Exhibit 13

4. At the end of 1983, the partnership paperwork was complete, and I delivered a draft to Mr. Scherer. Another copy was delivered to the Senator's Minneapolis office.

5. I later learned that Senator Durenberger had retained another firm to conclude the partnership transaction and that the partnership documents we had prepared were not used in the form we had delivered. I have done no further legal work for the Senator after my assistance in drafting the partnership paperwork.

6. My work on the partnership documents was done in the good faith belief that I was implementing a legimate business transaction. I had no knowledge that this partnership transaction related to Senator Durenberger obtaining reimbursements from the Senate. To the best of my knowledge and belief, Senator Durenberger had no intent to deceive the Senate or obtain reimbursements from the Senate in an unlawful manner.

Dated this 6th day of June, 1990.

Don M Lattimore

Don M. Lattimore

Subscribed and sworn to before
me this 6th day of June, 1990,
by Don M. Lattimore.

Notary Public

THOMAS M. MOONEY
MY COMM. EXPIRES MAY 18 1992

AFFIDAVIT OF MICHAEL C. MAHONEY

STATE OF MINNESOTA)
) ss.
COUNTY OF HENNEPIN)

MICHAEL C. MAHONEY, being sworn, deposes and says:

1. I am a partner in the law firm Mahoney Walling & Kelley, Professional Association, in Minneapolis, Minnesota. I make this affidavit in connection with the current proceedings before the United States Senate Select Committee on Ethics involving Senator David F. Durenberger.

2. I served as one of Senator Durenberger's legal counsel in connection with certain transactions involving his condominium from late in 1983 through 1989. The Senator first came to me in November or December 1983 and asked me to complete the paperwork for a partnership agreement he had entered into with Roger Scherer. I understood that he had previously retained Richard Langlais and Randy Johnson in this matter. A partnership agreement had been drafted but not executed, and the Senator was frustrated that the documentation had not been completed sooner.

3. At our first meeting, Senator Durenberger gave me a brief description of the partnership: he and Mr. Scherer had agreed to combine their two condominium units and to share the expenses. The Senator would rent one of the units from the partnership. I later learned that he and Mr. Scherer may have discussed at various times an exchange of units, but by the end of July, I was informed, they had decided on a partnership and acted in accordance.

Exhibit 14

4. I assigned one of the people working with me, David Steingart, to the project. He drafted a partnership agreement, principally taken from Dick Langlais' version, and a lease. The partnership agreement expressly stated that it recorded and expanded upon the oral agreement reached between the parties in July, 1983, as does the Langlais version. Other than completing the paperwork, the only significant input we had was advice regarding certain tax aspects of the transaction -- the basic terms of the agreement were already in place.

5. It is my understanding that the basic partnership documents were executed between December 1983 and February 1984. A recent opinion by Deloitte & Touche (Att. 1) confirms that, even though the documentation was not completed, a partnership existed for tax purposes on the date the original deal was orally agreed to by the parties, which I was told and believe was in July, 1983.

6. I understand that after the partnership documents were signed, Mr. Steingart sent them to Mr. Johnson for review. Mr. Johnson then apparently notarized the documents using the effective date of the agreement, July 28, 1983. Neither Senator Durenberger nor I was aware of the date used by Mr. Johnson until it was recently brought to our attention.

7. Some time between approximately May and July 1984, David Steingart informed me that the name of the partnership had been changed. I do not believe that the purpose of this was in any way to mislead the Senate or to obtain reimbursement to which Senator Durenberger was not entitled.

8. At some time, I became aware that the Senator changed his legal and voting residence to Avon and that he was receiving reimbursement for official business stays in the condominium. However, it was my understanding that Randy Johnson was advising the Senator as to these issues during the late 1983 - early 1984 period.

9. In 1985, when Senator Durenberger expressed an interest in making some investments, I advised that he should establish a blind trust to protect against any claim of conflict of interest regarding his investments. I also offered to serve as trustee. At my direction, an attorney in my firm, Michael Schley, prepared the trust instrument and researched the propriety of my serving as trustee. He also communicated with the Senate Ethics Committee and received its approval of the trust instrument. Our purpose in creating the trust was to ensure ethical conduct regarding the Senator's personal business affairs. The Senator relied on me to establish and operate the trust in a lawful manner.

10. We generally determined that passive investments should be placed in the trust's assets. When we looked at other Senators' blind trusts, we saw that some had included their interests in real estate partnerships. This suggested to us that the Senator's interest in his partnership with Roger Scherer should be included.

11. I understood that, due to the nature of the Senator's blind trust, I generally could not speak with him about the trust's investment decisions. I do not recall Senator Durenberger asking about, nor do I recall ever discussing with him,

whether renting the partnership's condominium and claiming Senate reimbursement for official business stays was consistent with the concept of a blind trust.

12. When Roger Scherer told me he wanted to remove his condominium unit from the partnership, I felt my role then was to discuss the matter with the Senator, ask his views, and take his instructions. We ultimately prepared a quit claim deed transferring the unit from the partnership back to Mr. Scherer.

13. We were asked by someone on Senator Durenberger's staff what effect Mr. Scherer's leaving the partnership would have on the Senator's ability to claim reimbursement. I asked a lawyer in our office, Jeff Robbins, to look at that question. He concluded that Mr. Scherer's leaving would have no effect. He summarized his findings in a memorandum. (Att. 2).

14. I informed Senator Durenberger's office of Mr. Robbins' conclusion, but I also emphasized the limited nature of the issue, and that we had been unable to find support for the underlying assumption that reimbursement under the partnership was proper. Given this uncertainty, I advised the Senator that he could transfer the condominium to a third person and lease it back if he wished to continue receiving Senate reimbursement for official business stays there.

15. Sometime later, I was told Paul Overgaard or his company Independent Service Company ("ISC") was interested in purchasing the Senator's condominium to facilitate Mr. Overgaard's business trips to Minneapolis. To the

best of my recollection, I had discussions with Mr. Overgaard and the Senator during late 1986 and early 1987, at which time a sale and leaseback agreement was reached.

16. Once the agreement had been reached, I naturally turned my attention to other matters. Some time later, we drafted documents memorializing the sale and lease-back agreement.

17. It was my understanding that the nature of the agreement was that of a contract for deed, where the sale was conditional upon completion of the contract terms, i.e. a down payment, payment of a note given the Senator, and Mr. Overgaard's (or his company's) assumption of the existing mortgage. Until Mr. Overgaard or his company fulfilled these terms, Senator Durenbergerr could refuse to give a deed, although he could deliver a deed if he chose to. Nevertheless, under this arrangement, Mr. Overgaard/ISC was treated as owner of the condominium from the date of agreement. He made the down payment, paid related bills, and received rents. He had all rights in the condominium with respect to third parties, except that, if he sold the unit, the buyer would assume only Mr. Overgaard's/ISC's conditional interest.

18. I believe that every one of Senator Durenberger's condominium transactions overseen by me was intended to be lawful and ethical. The Senator relied on my firm for legal advice with respect to some of his arrangements. The lawyers in my firm researched the areas of law we were asked to opine on, and we attempted to give the best legal advice we could. To the best of my knowledge and

belief, there was no intent to deceive the Senate by Senator Durenberger, and certainly none by me, or by any of the others involved in these matters, nor was there any attempt to have the Senator receive reimbursements from the Senate to which he was not lawfully entitled.

19. We also represented Senator Durenberger in matters relating to his publishing contract with Piranha Press. In July or August 1984, I had discussions with Thomas Horner, Senator Durenberger's then Chief of Staff, regarding possible opportunities for the Senator to earn income in connection with the publishing of any books he might write, including his book Neither Madmen Nor Messiahs, without violating the honorarium limitations.

20. Donna Hanbery, an attorney in my firm, researched the law relating to limitations on income from the sale of books and appearances. After completing her research, Ms. Hanbery's preliminary conclusion, with which I concurred, was that royalties from the sale of books and fixed income from appearances promoting the books or the publisher were not within the narrow legal definition of the term "honorarium."

21. It is my understanding that, in conjunction with an attorney for Piranha Press, Ms. Hanbery drafted and negotiated an Author-Publisher Agreement that provided, among other things, that Piranha Press would pay Senator Durenberger a fixed amount in quarterly installments over a two year period for appearances to promote either Senator Durenberger's books or the publisher. The

contract indicated that Piranha Press could charge the sponsors a fee for the Senator's promtional appearances.

22. My firm provided Senator Durenberger with two opinion letters dated October 1, 1984 that stated the conclusion that the fixed payments he would receive from Piranha Press for making promotional appearances under the contract would constitute a stipend as defined by the FEC and would not be subject to the honorarium limitations. However, we also advised Senator Durenberger that he should request an advisory opinion from the Federal Election Commission. Senator Durenberger instructed us to do so.

23. On October 19, 1984, Ms. Hanbery and I requested an advisory opinion from the FEC. We included in the letter to the FEC all of the information regarding the proposed contract that we considered material. In our letter, we requested the FEC to advise us if they wanted any further information regarding the proposed arrangement. On December 6, 1984, the FEC issued an opinion concluding that the arrangement whereby Piranha Press would pay Senator Durenberger in quarterly installments over a two year period for promotional appearances created a stipendiary relationship. Accordingly, the FEC opined that payments made to Senator Durenberger under this arrangement would not be viewed as honoraria and would not be subject to the honorarium limitations. We forwarded the FEC opinion to Mr. Horner and told him that Senator Durenberger could begin making appearances under the contract.

24. I assisted Piranha Press in arranging the Senator's appearances under the contract. The arrangement was that the costs, fees and expenses for my firm's services would be paid by Piranha Press. Requests made to the Senator's office for appearances were referred to me for handling as Piranha appearances. We generally contacted the requesting organizations and explained that the Senator's appearance would be in the nature of a book promotion. I believed that the referral of requests for appearances to Piranha Press was proper and consistent with the FEC advisory opinion. The implementation of the Piranha contract did not cause me to question the value of the FEC opinion.

25. My firm also prepared letters to the organizations for Gary Diamond's signature that confirmed the terms and conditions of the appearance. The letters stated that the organizations should make space available at the event for the prominent display and sale of the Senator's books and that Piranha Press would provide promotional materials.

26. I assumed it was Piranha Press's responsibility to provide copies of the books and promotional materials to the organizations. Some organizations objected to having the Senator's books displayed and sold at the appearance. I communicated this to Piranha Press and they made the decision as to how to proceed.

27. The advice we provided to Senator Durenberger on Piranha Press matters was given in good faith and was based on our legal analysis of the FEC laws and advisory opinions relating to honorarium and stipendiary income. I

believe Senator Durenberger did not perform any services under the Piranha Press contract until we advised him that it was legal as set forth in our written opinion regarding the arrangement and we obtained the FEC advisory opinion. I was actively involved in coordinating the Senator's Piranha Press appearances. I believed, and I so informed Senator Durenberger, that the payments he received from Piranha Press under the contract were not honoraria and were not subject to honoraria limitations, as set forth in my legal opinion and the FEC opinion. To the best of my knowledge and belief, Senator Durenberger had no intent to circumvent the honorarium limitations in an unlawful manner.

Michael C Mahoney
Michael C. Mahoney

Subscribed and sworn to before me this 7th day of June, 1990, by Michael C. Mahoney.

Tamara K Hardy
Notary Public

My Commission expires: ____________

TAMARA K. HARDY
NOTARY PUBLIC — MINNESOTA
HENNEPIN COUNTY
My Commission Expires Aug. 27, 1992

ATTACHMENT 1

Deloitte & Touche

1600 Landmark Towers
345 St. Peter Street
Saint Paul, MN 55102-1656

Telephone: (612) 222-2514
Telecopy: (612) 297-6353

January 9, 1990

Mr. Michael Mahoney
Mahoney, Walling & Kelley P.A.
4150 Multifoods Tower
Minneapolis, Minnesota 55402

RE: Tax status of 703/603 Association

Dear Michael,

You have asked us to review whether it was appropriate to report the operations of the 703/603 Association as a "tax" partnership, to be filed on a form 1065. Based on the facts outlined below, the rental activity may be construed as a joint venture, properly reportable as a tax partnership. Consequently, any related income or loss from the partnership should have been included in Dave Durenberger's 1983 return.

To summarize the facts, Durenberger and Scherer individually owned condominium units 603 and 703, respectively. On July 28, 1983, the parties reached an oral agreement to jointly operate the condominiums as rental properties, and accordingly they would share in the profit and losses from their venture. No written partnership agreement or deeds were executed in 1983; however, a partnership tax return was filed for 1983.

In 1984, a written partnership agreement and deeds transferring title to the partnership were executed. The effective date of these documents was July 28, 1983, corresponding to the date of the oral agreement.

Because the deeds were not executed in 1983, the partnership did not have the best evidence of title until 1984. Accordingly, there is some question as to whether the partnership owned the Units in 1983. We understand however, that the partners intended to convey their interests in the units to the partnership and agreed to share the profits and losses on the combined units from July 28, 1983. For tax purposes, a partnership may exist outside of the legal formalities of partnership and real estate law, and may include a "joint venture". To have a joint venture, IRS Regulation Section 301.7701-3(a) requires the existence of some business enterprise operated by 2 or more persons. The mere sharing of expenses is not sufficient, but rather a sharing of profits and losses of a business activity is required.

In the arrangement between Durenberger and Scherer, the parties agreed to share in the profits and losses of the combined rental operations of the condominiums. Therefore, even though legal title may not have been transferred, the parties had probably entered into a joint venture, constituting a partnership for tax purposes. Thus, the combined operations of the activity were properly reported and characterized in 1983 on form 1065, and the corresponding income or loss should have been included in each partners' individual tax return.

If you would like to discuss the above in more detail, please give us a call.

Sincerely,

James A. Weichert

ATTACHMENT 2

CURTIN, MAHONEY & CAIRNS
A Professional Association
Attorneys at Law
4150 Multifoods Tower
Minneapolis City Center
Minneapolis, Minnesota 55402
(612) 333-5411

MEMORANDUM

TO: FILE

FROM: JEFFREY C. ROBBINS

DATE: NOVEMBER 12, 1986

RE: DAVID DURENBERGER--TRAVEL REGULATIONS
OUR FILE NO. 1468-015

FACTS

Senator Durenberger and Robert Scherer have been partners in a general partnership which holds two condominiums. When Durenberger travels to Minneapolis on Senate business, he has been staying in a partnership condominium and has been receiving a per diem lodging reimbursement amount from the Senate. At the request of Scherer, the partnership is to terminate and Durenberger will hold one of the condominium units in his own name.

ISSUE

Will the termination of the partnership affect Durenberger's ability to receive the per diem lodging reimbursement amount when he stays in Minneapolis at his condominium on official Senate business?

CONCLUSION

Nothing in the Senate Travel Regulations indicates that termination of the partnership will affect Durenberger's ability to receive the per diem lodging reimbursement amount.

DISCUSSION AND ANALYSIS

The Senate Travel Regulations currently in effect, as revised by the Committee on Rules and Administration effective December 8, 1980, provide that traveling expenses which will be reimbursed are confined to those expenses essential to the transaction of the official business while away from the official station or post of duty. According to the Rules, the official duty station of all Senate members is considered to be the metropolitan area of Washington, DC, except during adjournment sine die or the

[illegible] adjournment period authorized in odd-numbered years by Public Law 91-510, Approved October 26, 1970. While the Senate is in session, therefore, Durenberger's travel to Minneapolis is deemed to be travel away from his official duty station and he is therefore entitled to reimbursement of his travel expenses. This analysis was confirmed by a blind telephone call to Dennis G. Doherty, Senior Auditor for the Committee on Rules and Administration.

Because Durenberger's travel will still be away from his official duty station after the partnership terminates, nothing in the Rules indicates that termination of the partnership will affect Durenberger's ability to receive the per diem lodging reimbursement amount.

ISC INDEPENDENT SERVICE COMPANY
Paul P. Overgaard, President
P.O. Box 171, N. Hwy. 13 • Albert Lea, MN 56007 • (507) 373-8216 • FAX (507) 373-6220
3914 Cedarvale Drive • St. Paul, MN 55122 • (612) 687-9163

June 1, 1990

AFFIDAVIT OF PAUL P. OVERGAARD

PAUL P. OVERGAARD, being sworn, deposes and says:

1. I am President of Independent Service Company of Albert Lea, Minnesota, a business that designs, implements and administers employee benefit programs for other businesses. I make this affidavit in connection with the current proceedings before the United States Senate Select Committee on Ethics involving Senator David F. Durenberger.

2. I have been a friend of Senator Durenberger's since 1965. In 1978, I was the Senator's campaign manager.

3. I first learned about the possible availability of condominium no. 603 when I was informed that Roger Scherer wanted to leave the partnership between him and the Senator due to a change in the tax code. I expressed an interest in buying the unit. It made sense -- I would have a place to stay when in Minneapolis on business during the week, and the Senator would rent it regularly on weekend days when I wouldn't be there.

4. Serious discussion of the purchase of the condominium by my company, ISC, took place in the latter part of 1986. Most of the discussion as to the details of the transaction was with Michael Mahoney. I believed I reached an agreement to purchase the property in late 1986 or early 1987.

Exhibit 15

5. It was agreed that I would purchase condominium no. 630 using a contract for deed. This arrangement meant that I owned the property subject to the completion of the contract; the Senator had no right to repossess the property unless I defaulted on the contract provisions. Our purchase agreement involved a down payment, my assumption of the Senator's mortgage, and a note to the Senator. Once I fulfilled the terms of the contract (*i.e.*, complete payment of the note and formal assumption of the mortgage), a deed would be filed in my name.

6. Initially, it was intended that the effective date of our agreement would be January 1, 1987. But Mr. Mahoney was slow to dissolve the partnership, and reimbursement for rents paid to the partnership continued through March. As a result, the operational date of the purchase was moved back to April 1, 1987.

7. Mr. Mahoney was extremely slow in preparing the necessary documents for the condominium sale. I received the first drafts in August 1987. The final paperwork was dated to reflect the April 1, 1987 operational date of my agreement with Senator Durenberger.

8. ISC did not send rental bills for the Senator's 1987 stays before December 1987. We had not received instruction from Mr. Mahoney's office as to how to proceed. Further, I assumed that the condominium arrangements would be done in good time.

9. I subsequently became very frustrated with Mr. Mahoney for his failure to complete the documentation of my purchase. I wrote to him and Senator Durenberger regarding my displeasure. At one point in 1988, I had my own attorney look at the deal and communicated this to Mr. Mahoney

in an effort to get him to finalize the paperwork.

10. I became so frustrated with the deal that I even offered to reverse the transaction with Senator Durenberger. Although we had informal discussions about the possibility of his buying the condominium back from me, I was never legally obligated to transfer it back to him.

11. ISC's purchase of condominium no. 603 was a legitimate transaction, not a sham. A down payment was made, Senator Durenberger paid rents, and I pay expenses relating to the condominium. There was an embarrassing looseness in the procedure, but the agreement between Senator Durenberger and me was clear to me.

12. Most certainly, there was no scheme or conspiracy to mislead the Senate or unlawfully to obtain reimbursements to which the Senator was not entitled. I have known Senator Durenberger for many years, and I am convinced that he would never be party to such conduct.

Dated this 1 ~~th~~ day of June, 1990.

Paul P. Overgaard
Paul P. Overgaard

SUBSCRIBED AND SWORN to before me this 1st th day of June, 1990, by Paul P. Overgaard.

Joan L. Sorenson
NOTARY PUBLIC

JOAN L. SORENSON
Notary Public, Freeborn County, Minnesota
My commission expires: My Commission Expires June 22, 1991

AFFIDAVIT

I, CHARLES D. PHILLIPS, being duly sworn, do depose and state as follows:

1. I was the President of the American Protestant Health Association ("APHA") from 1974 to 1988. My current address is Alexion Brothers Medical Center, Department of Religion, 800 West Biesterfield Road, Elk Grove Village, Illinois 60007. APHA is a trade association comprised of approximately 160 Protestant church hospitals and approximately 2,000 chaplains who work in these hospitals.

2. Each year since 1980, APHA has sponsored an Annual Forum in Washington, D.C. The purpose of these meetings is to educate APHA members about health care legislation and to provide them with an opportunity to meet with lawmakers. Attendance at these meetings is approximately twenty to thirty-five members. A copy of the 1985 Annual Form agenda is appended hereto as Attachment A.

3. I invited Senator David Durenberger to address the 1985 Annual Forum on April 24, 1985 because he was the Chairman of the Health Subcommittee of the Senate Finance Committee. I did not invite Senator Durenberger to promote his book(s) at the Forum. I believe that the invitation to Senator Durenberger to address the Forum was issued by Frederick Graefe, APHA's lobbyist in Washington, D.C. Mr. Graefe handled the details of Senate Durenberger's appearance.

4. Senator Durenberger, Senator Mark Andrews and Congressman Richard Gephardt each gave addresses during a noon luncheon on April 24th in Room S-211 of the Capitol Building. I attended each of these addresses. Each Member spoke about then current health care legislation. I

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HEARING
EX. 64

Durenberger Exhibit 16

do not recall Senator Durenberger mentioning his book(s) during his remarks. Similarly, I do not recall seeing any display of the Senator Durenberger's book(s) at any time during the 1985 Forum.

5. At some point I had a conversation with Mr. Graefe in which he informed me that the check for Senator Durenberger was to be made payable to Piranha Press. I do not recall when this conversation took place.

6. Shortly after the 1985 Forum, I sent a letter dated May 10, 1985 to Senator Durenberger to thank him for his appearance at the Forum. A copy of this letter is appended hereto as Attachment B. In the letter, I stated that the Senator's $1,000 honorarium was enclosed. I believe that I enclosed in that letter check number 020496, dated May 13, 1985, payable to Piranha Press. A copy of this check is appended hereto as Attachment C.

7. It was APHA policy to provide each Member of Congress who addressed an Annual Forum with an honorarium. Pursuant to the policy, Senator Andrews and Congressman Gephardt each received an honorarium in connection with their appearances at the 1985 APHA Annual Forum. I considered the payment to Piranha Press for Senator Durenberger's appearance to be the same as the honorarium payments to Senator Andrews and Congressman Gephardt.

8. Senator Durenberger also addressed APHA's 1986 Annual Forum on April 16, 1986. Once again, the Senator was invited to speak because of his position on the Health Subcommittee of the Senate Finance Committee, not because of his book(s). As with the 1985 event, Mr. Graefe extended the invitation to Senator Durenberger and arranged the details of his appearance.

9. I do not recall any mention or display of the Senator's book(s) during the 1986 Forum. Senator Durenberger and Congressmen William Gray and William Gradison each discussed then

pending legislation regarding health care. Congressmen Gray and Gradison each were paid an honorarium for their appearance.

10. I received a letter dated April 18, 1986 from Mr. Graefe, which outlined the honorarium to be provided to each speaker. Attached to a copy of this letter is a sheet of paper with my handwriting that indicates that the check for Senator Durenberger's appearance was to be sent to Mr. Graefe and made payable to Piranha Press. Copies of this letter and my notes are appended hereto as Attachment D. I signed the check dated May 19, 1986 for $2,000 to Piranha Press. A copy of this check is appended hereto as Attachment E. Once again, I considered this payment to Piranha Press as an honorarium payment, just like those made to Congressmen Gary and Gradison.

11. Senator Durenberger's appearances at the two APHA events were not book promotions. The Senator discussed the same issues as the other Members of Congress who gave addresses. I do not recall any mention or display of Senator Durenberger's book(s) at either the 1985 or the 1986 Forum and I never received promotional literature regarding the Senator's book(s). I do not recall having been asked to display the Senator's book(s) at either the 1985 or the 1986 Annual Forum. Had I been asked, I believe that I would have complied with the request. In my view, the only difference between Senator Durenberger's appearance and those of other Members of Congress in 1985 and 1986 was that Senator Durenberger's honorarium payment was sent to Piranha Press.

12. Senator Durenberger addressed the APHA Annual Forum in 1988. The Senator's appearance at the 1988 Forum was very similar to his appearances at the 1985 and 1986 Forums. For each Annual Forum, Senator Durenberger was invited to address the APHA because of his position

on the Health Subcommittee of the Senate Finance Committee. Senator Durenberger discussed pending health care legislation at each Forum. In 1988, APHA paid Senator Durenberger directly for his speech, instead of paying Piranha Press, as it had in 1985 and 1986.

Charles D. Phillips
CHARLES D. PHILLIPS

SUBSCRIBED AND SWORN TO before me this 5th day of ~~January,~~ February 1990.

Anne Kenney
Notary Public

My Commission Expires: April 12, 1992

[SEAL]

" OFFICIAL SEAL "
ANNE KENNEY
NOTARY PUBLIC, STATE OF ILLINOIS
MY COMMISSION EXPIRES 4/12/92

City of Washington)
) : ss.
District of Columbia)

AFFIDAVIT OF ANNE KELLY PLANNING

I, Anne Kelly Planning, being duly sworn, hereby depose and state that:

1. I am of full age, competent, and base this affidavit on personal knowledge.

2. I make this affidavit for submission to the Senate Select Committee on Ethics (the "Committee") in connection with the proceedings involving Senator David Durenberger.

3. At the request of Special Counsel to the Committee, I executed an affidavit dated February 1, 1990. I wish to supplement my February 1, 1990 affidavit, as follows:

4. I served as Senator Durenberger's personal secretary and scheduler from approximately November 1983 through August 1985.

5. While in Senator Durenberger's employ, I learned that the Senator had received notification he could receive income relating to his book, Neither Madmen Nor Messiahs, outside federal honorarium limits.

6. During this time, I did not have occasion to learn or otherwise come to believe that the Senator's receipt of such income was an illegal circumvention of the honorarium limits or was otherwise impermissible. Accordingly, I had no reason to believe that it was inappropriate to refer requests for appearances by the Senator to his attorney Michael Mahoney or to Piranha Press, the publisher of the Senator's book. Nor, to the

Exhibit 17

best of my knowledge, during my tenure, was I advised by Mr. Mahoney or anyone else that such referral was inappropriate or otherwise improper.

7. Indeed, after a speech had been designated a "Piranha appearance," I was to forward a copy of the invitation to Mr. Mahoney who was to contact the requesting organization and arrange certain details of that appearance.

8. During this period, I did not have occasion to learn or otherwise come to believe that Senator Durenberger intended illegally to circumvent the honorarium limitations through his arrangement with Piranha Press.

FURTHER AFFIANT SAYETH NOT.

Anne Kelly Planning
Anne Kelly Planning

Subscribed and sworn to
before me this

8 day of June, 1990

Michelle Jean Marshall
Notary Public

My Commission expires:
MICHELLE JEAN MARSHALL
NOTARY PUBLIC, WASHINGTON, D.C.
MY COMMISSION EXPIRES SEPT. 30, 1990

Affidavit

I, Jimmie R. Powell, being duly sworn, do depose and state as follows:

1. I have been with the staff of the Senate Committee on Environment and Public Works since August, 1985. My home address is 9404 Talisman Drive, Vienna, Virginia 22182. From 1983 to 1985, I served as Legislative Director to Senator Dave Durenberger. From 1981 to 1983, I was Staff Director of the Subcommittee on Intergovernmental Relations of the Senate Committee on Governmental Affairs.

2. In 1985, while I was a member of Senator Durenberger's staff, I was aware of his arrangement with a publisher, Piranha Press. I was concerned by Senator Durenberger's involvement with Mr. Mahoney and Piranha Press. I was aware that Mr. Mahoney asked groups to pay in excess of the $2,000 per appearance limitation on honoraria for the Senator's appearances. I was concerned because groups asked to pay a fee greater than $2000 were well aware of the honoraria limit and expressed dismay at the request for higher fees. I learned of the dismay through conversations with other staff. I was also concerned about an arrangement which would have the appearance of avoiding the overall limitation on honoraria income. I was aware that the F.E.C. had been asked for and had provided an opinion indicating that the arrangement did not violate F.E.C. rules.

3. I do not believe that anyone set out to publish a book in order to earn income for the Senator. After the 1982 election, the Senator put considerable effort into writing a book on "changing the role of government" which would reflect an approach to government which he believed was unique to his experience as a Minnesota politician. He hired a ghost writer and several chapters of that book were produced. I was not involved in the decisions which led up to publication of Neither Madmen nor Messiahs, but it was a legitimate book which had received good press when released previously as two white papers and which was reviewed as a book by the Minnesota press.

4. The Senator wanted to be a national spokesman on health care policy and sought every opportunity to speak or write on his health care policy ideas. His principal interest was in building his image as the central figure in health care policy in the Congress. That was the purpose of the book-writing effort and of an effort to establish a foundation that would fund health care research in which I was involved. I do not believe that the publishing contract was a deliberate effort to "beat the system".

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COUNSEL
HEARING
EX. 67

Durenberger Exhibit 18

5. On the personal side, he did not have the resources to live the role which the Washington world defined for him. He is an attractive, bright, liberal Republican, from Minnesota who was willing to work hard on some very tough public policy issues. He had to compete to be heard in an institution with many members personally well off. He did not have any significant financial assets and borrowed money during his first few years in the Senate to meet living expenses. He does not deal well with the large or small problems of every day life. He would simply escape from them into work in the Senate and travel in Minnesota. The personal and financial problems mounted to the point that he was essentially unable to solve them with the resources at his disposal.

6. During the period between Tom Horner's departure and the decision to hire Doug Kelly, I became involved in some of these matters. I found that the financial affairs of the office were in disarray with bills unpaid for many months. There were also personal matters which had a profound impact on the Senator's life and the lives of some staff. In addition to taking over the chairmanship of the Intelligence Committee, hiring a new administrative assistant and restructuring the office, these were the principal matters of concern during this period. The publishing contract with Piranha Press was a troubling matter, but not the principal focus of concern at this time.

7. My understanding of the scheduling procedures with respect to the publishing contract is that when an organization invited Senator Durenberger to speak and offered an honorarium payment, the invitation was forwarded to Michael Mahoney and arranged as a Piranha Press appearance. If no honorarium payment was available, the Senator's personal secretary and scheduler, Anne Kelly, handled the appearance.

8. I recall on one occasion receiving a telephone call from Mr. Mahoney, who was scheduling a speech for the Senator. Mr. Mahoney asked me how much I thought the organization that had invited the Senator to speak would be willing to pay for the Senator's appearance. I did not provide Mr. Mahoney with any information and refused to make a suggestion, because I did not want to become involved with the arrangement with Piranha Press.

9. I believe that other members of Senator Durenberger's staff were also concerned by the Senator's dealings with Piranha Press. I had discussions with both Tom Horner and Chip Kahn in which we shared our concerns about the appearance created by the relationship with the publisher and the trouble that it could cause the Senator. Mr. Kahn informed me that he had received many complaints from organizations in the health field about Mr.

Mahoney and Piranha Press arrangements. I do not recall ever sharing these concerns with the Senator directly.

10. I recall during my tenure on Senator Durenberger's staff a suggestion by a consultant hired to recruit a new administrative assistant that an opinion by the Ethics Committee with respect to the publishing contract might be helpful. I agreed, but I did not take action to follow through on the suggestion. Appended hereto as Attachment A is a copy of a draft letter to the Ethics Committee, dated April 8, 1985, with a telecopier cover letter from Mr. Mahoney addressed to me. I do not recall receiving this letter. Other than my failure to follow through on the suggestion of the consultant, I do not recall whether a letter was sent to the Ethics Committee, and if not, why not.

11. I resigned from Senator Durenberger's personal staff effective in August of 1985. While one of the factors that contributed to my decision to leave was the Senator's arrangement with Piranha Press, there were several other factors of more significance that caused my resignation. As a staff person with the Committee on Environment and Public Works, I continue to be associated with Senator and prepare materials for him on some environmental issues. I continue to admire his ability as a legislator and his willingness to take the heat to do what is right in matters of public policy.

Jimmie Powell
Jimmie R. Powell

Subscribed and Sworn before me this 2nd day of February, 1990.

Notary Public/
NOTARY PUBLIC
DISTRICT OF COLUMBIA

My Commission Expires:___________.

[SEAL] MY COMMISSION EXPIRES APRIL 14, 1994

Sent

ATTACHMENT A

CURTIN & MAHONEY, P.A.
4150 Multifoods Tower
Minneapolis City Center
Minneapolis, MN 55402
(612) 333-5411

TELECOPIER COVER LETTER

PLEASE DELIVER THE FOLLOWING PAGES

TO:

NAME: Jim Powell

ADDRESS: Senator Durenberger's Office

TELEPHONE: 202-224-9486

FROM:

NAME: Michael Mahoney

ADDRESS: ____

TELEPHONE: 612-333-5411

DATE: 4-11-85

TIME: 9.46

SPECIAL INSTRUCTIONS: ____

TOTAL NO. OF PAGES INCLUDING THIS COVER LETTER: 2

WE ARE TRANSMITTING ON THE FOLLOWING SPEED:

2____, 3____, 4____, 6 min.____

IF YOU DO NOT RECEIVE ALL THE PAGES, PLEASE CALL OUR OFFICE NUMBER (612) 333-5411 AS SOON AS POSSIBLE. THANK YOU.

Telecopier Phone: (612) 339-6962

C & M Operator: ____

Our File Name and No: ____

PRELIMINARY DRAFT

April 8, 1985

Senate Ethics Committee
____
____

DURENBERGER STIPEND CONTRACT

Dear ____________:

Out of an abundance of caution I wish to advise you of the contract I have entered into with my publisher and secure from you any interpretation you may have differing from the opinions which I have previously received.

Briefly, I have entered into a contract with Pirahna Press (the "Publisher") whereunder the Publisher has the exclusive right to publish my books (and has done so with respect to one of my proposed books) and whereunder the Publisher has agreed to pay me a stipend per year for promotion of my books. Under this arrangement I make various appearances before various groups in promotion of my book(s) who in turn pay my Publisher various amounts and at the end of each quarter my Publisher pays me one-quarter of my annual stipend together with royalties from the sales of my book(s).

I have been advised that the only limitations on receipt of income from appearances are those found in the Federal Election Campaign Act ("FECA") and under the 30% honoraria limitation amendment ("Pub. L. 98-63"). I have received a favorable opinion from the Federal Election Commission and my legal counsel to the effect that the stipend my Publisher will pay me does not constitute honorarium income under the FECA or Pub. L. 98-63. Copies of these opinions are attached.

As I indicated above, out of an abundance of caution I wish to apprise you of this arrangement and if you believe that this arrangement is contrary to any law, rule or interpretation that you are aware of, that you will so advise me. Until and unless I hear to the contrary I will assume that the advice I have received from the Federal Election Commission and my counsel is correct and that I may carry out the terms of my contract with my Publisher.

Very truly yours,

DAVE DURENBERGER
USS

Enclosure

F5CMCMsak0408853

AFFIDAVIT OF JIM M. ROANE

County of Hennepin)
) : SS
State of Minnesota)

I, Jim M. Roane, being first duly sworn, do hereby depose and state as follows:

1. I served as Senator David F. Durenberger's Special Assistant from May 1985 to August 1986. I make this affidavit for submission to the Senate Select Committee on Ethics in connection with the proceedings involving Senator Durenberger.

2. Shortly after I joined the Senator's staff, I became aware that he had written a book, Neither Madmen Nor Messiahs, which was published by Piranha Press. In 1986, Piranha Press published his second book Prescription For Change.

3. I was informed by Anne Kelly or someone else on the staff that the Senator had an agreement with Piranha Press and that he would be making speeches on behalf of his publisher. When those speeches were made in Washington, I attended with the Senator. One of my responsibilities was to ensure that the Senator always had copies of his books at Piranha Press appearances. At many of the PIRANHA PR. speeches I attended, Senator Durenberger talked about his books and the publisher.

Exhibit 19

4. I did not sell the Senator's books at the appearances. However, I did take the names of anyone interested in obtaining the books so this information could be provided to Piranha Press. On occasion when people attending the appearances asked me how they could get a copy of Neither Madmen Nor Messiahs, I would tell them it was available at B. Dalton bookstores.

5. While my involvement in this matter was limited, I never came into the possession of any information indicating that Senator Durenberger was attempting unlawfully to circumvent the honorarium limitations.

J. M. Roane.
Jim M. Roane

Subscribed and sworn to before me this 7 day of June 1990.

Susan J. Clifford
Notary Public

My Commission expires: 10-3-94

Susan J. Clifford
Notary Public-Minnesota
Hennepin County
My Comm. Exp. 10-3-94

AFFIDAVIT OF JEFFREY C. ROBBINS

STATE OF MINNESOTA)
) ss.
COUNTY OF HENNEPIN)

JEFFREY C. ROBBINS, being sworn, deposes and says:

1. I am an attorney with the firm of Mahoney Walling & Kelley Professional Association, in Minneapolis, Minnesota. I make this affidavit in connection with the current proceedings before the United States Senate Select Committee on Ethics involving Senator David F. Durenberger.

2. I became involved with Senator Durenberger's condominium arrangements in 1986 when Michael Mahoney asked me to research the question of whether Roger Scherer's request to withdraw his unit from the partnership with the Senator would affect the Senator's ability to receive per diem lodging reimbursement for his stays at the Minneapolis condominium when he was on official Senate business. For purposes of this assignment, it was assumed that reimbursement under the partnership arrangement was proper. My conclusion that this action did not effect reimbursement is reflected in the attached memorandum.

3. As my memorandum indicates, during my research on this project I contacted Dennis Doherty of the staff of the Senate Rules Committee to confirm my analysis.

4. My involvement with Senator Durenberger's condominium was limited to my research on November 12, 1986, and my subsequent discussions

Exhibit 2i

with Mr. Mahoney. I recall no other involvement in the condominium matter other than set forth in this affidavit.

5. My work for Senator Durenberger was done in good faith. Neither I nor, to the best of my knowledge and belief, Mr. Mahoney or Senator Durenberger had any intent or attempted to deceive the United States Senate or to obtain reimbursements for Senator Durenberger to which he was not lawfully entitled.

Dated this 8 th day of June, 1990.

Jeffrey C. Robbins

Subscribed and sworn to before me this 8 th day of June, 1990, by Jeffrey C. Robbins.

Tamara K Hardy
Notary Public

My Commission expires: ____________

TAMARA K. HARDY
NOTARY PUBLIC — MINNESOTA
HENNEPIN COUNTY
My Commission Expires Aug. 27, 1992

CURTIN, MAHONEY & CAIRNS
A Professional Association
Attorneys at Law
4150 Multifoods Tower
Minneapolis City Center
Minneapolis, Minnesota 55402
(612) 333-5411

MEMORANDUM

TO: FILE

FROM: JEFFREY C. ROBBINS

DATE: NOVEMBER 12, 1986

RE: DAVID DURENBERGER--TRAVEL REGULATIONS
OUR FILE NO. 1468-015

FACTS

Senator Durenberger and Robert Scherer have been partners in a general partnership which holds two condominiums. When Durenberger travels to Minneapolis on Senate business, he has been staying in a partnership condominium and has been receiving a per diem lodging reimbursement amount from the Senate. At the request of Scherer, the partnership is to terminate and Durenberger will hold one of the condominium units in his own name.

ISSUE

Will the termination of the partnership affect Durenberger's ability to receive the per diem lodging reimbursement amount when he stays in Minneapolis at his condominium on official Senate business?

CONCLUSION

Nothing in the Senate Travel Regulations indicates that termination of the partnership will affect Durenberger's ability to receive the per diem lodging reimbursement amount.

DISCUSSION AND ANALYSIS

The Senate Travel Regulations currently in effect, as revised by the Committee on Rules and Administration effective December 8, 1980, provide that traveling expenses which will be reimbursed are confined to those expenses essential to the transaction of the official business while away from the official station or post of duty. According to the Rules, the official duty station of all Senate members is considered to be the metropolitan area of Washington, DC, except during adjournment sine die or the

adjournment period authorized in odd-numbered years by Public Law 91-510, approved October 26, 1970. While the Senate is in session, therefore, Durenberger's travel to Minneapolis is deemed to be travel away from his official duty station and he is therefore entitled to reimbursement of his travel expenses. This analysis was confirmed by a blind telephone call to Dennis G. Doherty, Senior Auditor for the Committee on Rules and Administration.

Because Durenberger's travel will still be away from his official duty station after the partnership terminates, nothing in the Rules indicates that termination of the partnership will affect Durenberger's ability to receive the per diem lodging reimbursement amount.

SCHERER
BROS.
LUMBER
CO.

9110 - 83rd AVENUE NORTH
BROOKLYN PARK, MINNESOTA 55445
PHONE (612) 379-9633
FAX: (612) 627-0879

AFFIDAVIT OF ROGER H. SCHERER

ROGER H. SCHERER, being sworn, deposes and says:

1. I am the President of Scherer Bros. Lumber Company in Minneapolis, Minnesota. I am currently the Chairman of the Minneapolis Chamber of Commerce. I make this affidavit in connection with the current proceedings before the United States Senate Select Committee on Ethics involving Senator David F. Durenberger.

2. I have a long standing personal relationship with Senator Durenberger that began when we were in college in the 1950's and continues to date.

3. Senator Durenberger originally acquired the right to purchase condominium no. 603 from me in 1978. I purchased unit no. 703 as rental property around the same time.

4. In 1983, I came upon the idea that Senator Durenberger and I should combine our properties for tax and other reasons. I understood he would rent no. 603 and be eligible for Senate reimbursement for official business stays.

EEO/Affirmative Action Employer

Exhibit 21

I would acquire a constant tenant as part of the arrangement, something I had not in the past.

5. Senator Durenberger and I reached an oral agreement to combine our properties into a joint business arrangement on or about July 28, 1983. The lawyers were instructed to work out the details of the transaction, and it was decided that a partnership would be the appropriate vehicle to accomplish our goals. At some time the Senator asked Richard Langlais, a tax lawyer, to put together the paperwork for the partnership. Later Michael Mahoney and David Steingart took over the matter. We relied on the attorneys to structure the transaction in proper fashion.

6. Originally, an exchange of properties had been considered. However, Mr. Langlais told us that the exchange wouldn't work from a tax standpoint and that we should use a partnership instead.

7. It took the attorneys a number of months to complete the paperwork for our transaction. The necessary documents finally were sent to me in February 1984. I signed them in my office with no one present. Randy Johnson, who was familiar with my signature and Senator Durenberger's, notarized the documents at a later time. I have only recently become

aware that he used the effective date of our agreement, July 28, 1983, as the notarization date.

8. I thought a written agreement was necessary only to memorialize our oral agreement and to provide a method for terminating the partnership should that be necessary. I reviewed the paperwork to make sure these matters were covered and, finding that they were, was satisfied with the result.

9. As noted, I was aware that Senator Durenberger received reimbursement for his stays in the condominium. However, I paid little attention to this aspect of the arrangement. I didn't believe there would be any problem with reimbursement for rents for a condominium that was both more convenient and less expensive than a hotel.

10. In 1986, when changes in the tax laws were imminent, it appeared that rental property was no longer a good investment. I thus notified Senator Durenberger and Mr. Mahoney that I wanted to leave the partnership. Unfortunately, the dissolution proved to be lengthy, and the partnership account was not closed until March 31, 1987.

11. My accountants looked at my partnership records every year and never expressed any concern about the arrangement. Had there been problems with the tax treatment, they would have

told me. Further, I was personally audited by the IRS in 1986, and no question was raised about the tax treatment of the partnership.

12. In my view, there was no improper intent on anyone's part regarding this transaction. There was no attempt to mislead the Senate or to concoct a scheme to allow Senator Durenberger to obtain Senate reimbursements in an illegal way. Although the partnership documents were not signed until 1984, they clearly stated that they recorded and expanded upon an agreement that was effective July 28, 1983. Had we intended to do something devious, we surely would not have involved the number of people associated with this transaction. In any event, my long friendship with Dave Durenberger convinces me that he is an honest man who never would attempt to defraud the government.

Dated this 1st day of June, 1990.

Roger H. Scherer

SUBSCRIBED AND SWORN to before me this 1st day of June, 1990, by Roger H. Scherer.

Kenneth W Loney
NOTARY PUBLIC

My commission expires: 3/5/91

KENNETH W. LONEY
NOTARY PUBLIC — MINNESOTA
HENNEPIN COUNTY
My commission expires March 5, 1991

AFFIDAVIT OF MICHAEL W. SCHLEY

STATE OF MINNESOTA)
) ss.
COUNTY OF HENNEPIN)

MICHAEL W. SCHLEY, being sworn, deposes and says:

1. I am an attorney with the law firm of Mahoney Walling & Kelley, Professional Association, in Minneapolis, Minnesota. I make this affidavit in connection with the current proceedings before the United States Senate Select Committee on Ethics involving Senator David F. Durenberger.

2. I became involved with Senator Durenberger's blind trust at the request of Michael Mahoney in 1985. We first discussed the trust in approximately May 1985, a few months before I sent an October 17, 1985 letter (attached) to Senator Warren Rudman asking for the Ethics Committee's approval of the trust. I do not recall who drafted the trust agreement, although I may have done so, borrowing the language from another trust agreement.

3. Part of my work with the trust included research as to whether or not Gene Holderness or Mr. Mahoney could serve as trustee of the trust. When questions arose as to the appropriate interpretation of certain terms in the Ethics in Government Act, I contacted the staff of the Senate Ethics Committee for guidance. Attached is a memorandum I drafted dated May 24, 1985 summarizing my findings, including the response of the staff.

4. My principal contacts regarding the trust were with Michael Mahoney, who supervised the matter, and Susan Anderson of our office, who may have drafted the document or entered the document into our wordprocessing

Exhibit 22

system. I recall that on at least one occasion, I contacted Senator Durenberger's office to obtain some information (I don't recall what information). I also recall contacting the Ethics Committee with questions about reporting the trust on a financial disclosure statement.

5. I believe I was present for discussions where it was decided that a money market account should be included in the trust's assets and that the money market account should be located at Piper, Jaffray & Hopwood.

6. At one time, Mr. Mahoney asked me to look at certain provisions of the Ethics in Government Act relating to the operation of the trust. I believe we discussed the proposition that, because the trust was blind, Senator Durenberger could not discuss the trust's assets with the trustee, Mr. Mahoney, or direct their disposition. I did not discuss this with the Senator.

7. To the best of my knowledge and belief, the purpose of the trust was to assist the Senator in avoiding conflicts of interests and to facilitate his compliance with ethics rules. That was my intention, and I have no reason to believe that the Senator or anyone else had any other intention.

Dated this 7th day of June, 1990.

Michael W. Schley

Subscribed and sworn to before me this 7th day of June, 1990 by Michael W. Schley.

Notary Public

My Commission expires: April 23, 1993

BEVERLY M. OLSSON
NOTARY PUBLIC -- MINNESOTA
HENNEPIN COUNTY
My Commission Expires Apr. 23, 1993

CURTIN, MAHONEY & CAIRNS
A PROFESSIONAL ASSOCIATION
ATTORNEYS AT LAW

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MICHAEL C. MAHONEY
JOHN A. CAIRNS
SUSAN L. NEUMEYER
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OF COUNSEL
ALVIN H. GANDAL
ADMITTED IN D.C. AND OHIO

REPLY TO

October 17, 1985

Minneapolis

Mr. Warren B. Rudman
Chairman of Ethics Committee
Hart Senate Office Building
Room 220
2nd & Constitution Ave. NE
Washington, DC 20510

SENATOR DAVID DURENBERGER
OUR FILE NO. 01468-012

Dear Mr. Rudman:

Enclosed for your review and approval please find a Revocable Trust for the Management of Investment Property between Senator David F. Durenberger and Michael C. Mahoney, trustee.

Also enclosed please find Information Regarding the Trustee and Assets of a Blind Trust Under Section 102(e)(3) of the Ethics in Government Act of 1978.

After you have had an opportunity to review these documents, please contact the undersigned with your comments.

Very truly yours,

MICHAEL W. SCHLEY

Enclosures

cc: Douglas Kelley

F15HSKA/MWSsak1017852

CURTIN, MAHONEY & CAIRNS
Attorneys at Law
4150 Multifoods Tower
Minneapolis City Center
Minneapolis, Minnesota 55402
(612) 333-5411

MEMORANDUM

TO: MICHAEL C. MAHONEY

FROM: MICHAEL W. SCHLEY

DATE: MAY 24, 1985

RE: SENATOR DAVID DURENBERGER--BLIND TRUST
OUR FILE NO. 01468-012

FACTS:

Senator Durenberger intends to establish a qualified Blind Trust in accordance with the provisions of Section 702(e) of Chapter 18 United States Code, Section 102(e) of the Ethics in Government Act of 1978 (the "Act"). Senator Durenberger is considering appointing Michael Mahoney and Eugene Holderness to serve as trustees. Mr. Holderness is a "business consultant."

QUESTIONS PRESENTED:

1. Does Mr. Holderness fall into one of the permitted categories of trustees?
2. Do Mr. Mahoney and Mr. Holderness meet the independence tests required in order for them to serve as trustees?

CONCLUSIONS:

1. No, however, appropriate steps can be taken such that he will become a member of one of the permitted groups.
2. Whether either Mr. Mahoney or Mr. Holderness are sufficiently independent depends upon a careful consideration of facts beyond the scope of this memorandum. However, guidance as to what constitutes independent and unassociated is given herein.

S32MWSjlh0524852

SUBPOENA DOCUMENTS
Rec'd. MCM

DISCUSSION:

Section 102(e) sets forth the requirements regarding qualified blind trusts. Subsection (3)(A) sets forth the requirements regarding qualified trustees. First, "the trustee of the trust (must be) a financial institution, an attorney, a certified public accountant, a broker, or an investment adviser." Although no interpretative rulings have been issued by the Senate Select Committee on Ethics (the "Committee"), the staff of the Committee has stated its view that each trustee of a trust with multiple trustees must independently meet each of the tests. Thus, while Mr. Mahoney is an attorney and, therefore, meets this qualification as a trustee, unless Mr. Holderness can also meet one of the qualifications, Mr. Holderness may not serve as a trustee.

The term "financial institution" is not defined in the Act, and no regulations regarding such definition have been adopted. Further, the Committee has not issued any interpretative rulings regarding what constitutes a financial institution. However, the staff of the Committee has indicated (and their indication appears correct) that the term "financial institution" means banks, savings and loans, or mutual funds.[1] The term "broker" is defined by reference to the Securities Exchange Act of 1934.

The term "investment adviser" is defined to include "any investment adviser who, as determined under regulations prescribed by the supervising ethics office, is generally involved in his role as such an adviser in the management or control of trusts." No such regulations have been prescribed. In the certificate required to filed by the member with the Committee, the member is required to certify merely that the proposed trustee is an "investment adviser." Although the Act does not refer to the Investment Advisors Act, and no interpretations have been issued by the Committee, the staff of the Committee has indicated its view that the term "investment adviser" means an investment adviser registered under the Investment Advisors Act.

Assuming that Mr. Holderness is not a certified public accountant, attorney, or broker, it is my recommendation that Mr. Holderness be registered with the Securities and Exchange Commission as an investment adviser. Such a registration

---

[1] It should be noted that the list of acceptable trustees does not include an investment company. However, a later parenthetical states that independence of a "financial institution or investment company" should be determined by reference the officer or employee involved in management or control of the trust.

SUBPOENA DOCUMENTS
Rec'd. MCM

requires payment of a $150 filing fee and completion of a Form ADV. A review of that form indicates that the only item which probably will be difficult to obtain is certified financial statements of Mr. Holderness.

In addition to being a member of one of the stated categories of persons, the trustees must each meet certains tests set forth in the Act regarding independence. The Act provides that each trustee:

(i) Be independent of and unassociated with any interested party, so that the trustee cannot be controlled or influenced in administration of the trust by any interested party;

(ii) Is not, or has not been, an employee of the any interested party, or any organization affiliated with any interested party, and is not a partner of, or involved in any joint venture or other investment with, any interested party; and

(iii) Is not a relative of any interested party.

The term "interested party" is defined to mean "a reporting individual (here, the Senator), his spouse, and any dependent child if the reporting individual, his spouse, or dependent child has a beneficial interest in the principal or income" of the trust.

The terms "independent" and "unassociated" are not defined in the Act. Further, no regulations regarding definitions thereof have been adopted. In discussions with the staff of the Committee, the staff indicated that the determination whether the proposed trustee was independent and unassociated was to be made by the member. In accordance therewith, the member's certification includes a certificate that tracks the statutory language. The staff did indicate that, in determining independence and unassociation, the remaining language of Subpart (i), regarding ability of the trustee or any interested party to control the trustee and the language of Subparts (ii) and (iii) (regarding prior business activities and family relationships) provided the best guidance as to whether a proposed trustee was independent or unassociated.

In conclusion, the determination as to whether the proposed trustee meets the requisite tests is the member's as it is the member who is required to sign the certificate to be filed with the Committee.

The Act provides for a civil penalty of up to $5,000 (Section 106) against a member for a false statement on the certificate filed with the Committee. Further, a false statement on such

SUBPOENA DOCUMENTS
Rec'd. MCM

certificate could subject the member to liability pursuant to 18USC§ 1001. That Section subjects any person who makes any false, fictitious or fraudulent statements or representations in any matter within the jurisdiction of any "department or agency" of the United States to a fine of up to $10,000, or imprisonment of up to 5 years. The staff of the Committee has indicated that no proceedings of any sort have ever been brought regarding the non-independence of a trustee, but held open the possibility as to both civil and criminal penalties citing a recent criminal action against Congressman Hanson for failing to report, in his financial report pursuant to the Act, of certain debts owed to Bunker Hunt. No blind trust was involved in that action.

SUBPOENA DOCUMENTS
Rec'd. MCM

AFFIDAVIT OF HEIDI SHAW

HEIDI SHAW, being sworn, deposes and says:

1. I make this affidavit in connection with the current proceedings before the United States Senate Select Committee on Ethics involving Senator David F. Durenberger.

2. I joined Senator Durenberger's staff in January 1985 as assistant to Lori Krage. When she left the staff approximately one month later, I assumed her responsibilities. I worked under the immediate direction of the Senator's Administrative Assistants, first Tom Horner and then Doug Kelley. My responsibilities included handling all of the Senator's Senate business finances, preparing and submitting travel reimbursement vouchers to the Senate Disbursing Office, some work with the office budget, and some staff hiring. I left the Senator's office in June 1989.

3. During the period that Senator Durenberger was renting from the partnership, I tracked his stays in the condominium, confirmed that information with the Minneapolis office, and forwarded it to Jean Stow, the partnership's bookkeeper. She then sent bills to the Senator. I attached bills for official business stays to Senate vouchers. The Senator subsequently was reimbursed for payments made to Stow concerning official business stays.

Exhibit 2-3

4. Senator Durenberger went to Minneapolis approximately every other weekend. He stayed in the condominium because it was [illegible] than a standard priced hotel.

5. I routinely reviewed the dates of the Senator's condominium stays with Doug Kelley. At some time in 1987, he instructed me not to submit vouchers for rentals after March 1987. I understood that the reason for this was that he wanted to ensure that the documents relating to a sale to ISC, a company owned by Paul Overgaard, were in order before the Senator sought reimbursements. Around the end of 1987, Mr. Kelley directed me to submit vouchers for ISC rentals during the April-October period.

6. Subsequently, I returned to my usual procedures and provided dates of the Senator's condominium stays to ISC at the end of each month, as I had to the partnership's bookkeeper. I was unable to supply this information in advance because the Senator's plans often changed.

7. It was necessary to separate campaign-related expenses from Senate business expenses for reimbursement purposes. I was often in contact with the Rules Committee and the Senate Disbursing Office regarding the limitations on Senate travel reimbursement in connection with the Senator's travel to Minnesota during the period immediately prior to his election.

8. I do not believe that there was intentional wrongdoing related to Senator Durenberger's condominium arrangements. The Senator and his staff consulted attorneys or Senate Committees throughout the reimbursement processes to ensure the legality and propriety of our actions. I am certain that each of us, the Senator included, made a good faith effort to achieve honest and lawful reimbursements.

Dated this 6 th Day of June, 1990.

Heidi Shaw
Heidi Shaw

SUBSCRIBED AND SWORN to before me this 6 th day of June, 1990, by Heidi Shaw

Clifton W. Goodrich
NOTARY PUBLIC

My commission expires: 7/31/93

Draft of
June 5, 1990

AFFIDAVIT OF DAVID J. STEINGART

DAVID J. STEINGART, being sworn, deposes and says:

1. I am a Certified Public Accountant and an attorney practicing law in Minneapolis, Minnesota. I make this affidavit in connection with the current proceedings before the United States Senate Select Committee on Ethics involving Senator David F. Durenberger.

2. From September 1983 through May 1984, I was a full-time 3rd year law student. I also worked part-time as a law clerk with Michael Mahoney's law firm, Curtin & Mahoney, P.A. As a clerk, I was not licensed to practice law. All of my work assignments were given to me by licensed attorneys and my work was reviewed and supervised by licensed attorneys. Toward the end of 1983, Mr. Mahoney requested my assistance with the preparation of a Partnership Agreement between Senator Durenberger and Roger Scherer.

3. I subsequently drafted a Partnership Agreement using a draft given to me and represented to me (i) as having been prepared by Richard J. Langlais, Esq. and (ii) as expressly recording and expanding upon an oral agreement reached between Senator Durenberger and Roger Scherer in July 1983.

4. In February 1984, after the Partnership Agreement and related documents were prepared and had been signed, they were sent to me accompanied by a letter from Randy Johnson. Certain documents, e.g. quit claim deeds, had been notarized by Randy Johnson.

Exhibit 24

5. The Partnership Agreement was never recorded because Minnesota has no filing requirement for general partnerships.

6. I prepared the Partnership Agreement and related documents, to the best of my knowledge and belief at the time, in accordance with Minnesota law and the Internal Revenue Code of 1954, as amended.

7. During the term of the Partnership, I assisted with the preparation of the 1983 and certain other years' Federal and Minnesota tax returns for the Partnership. These returns were prepared from financial information provided to me, which, to the best of my knowledge and belief, was true and accurate.

8. To the best of my knowledge, Jean Stow was the Partnership's bookkeeper and she took in the income and paid the bills of the Partnership, including mortgage payments. Occasionally, she contacted Mr. Mahoney and me for assistance with some of the Partnership's bookkeeping matters.

9. In 1984, at the direction and under the supervision of Mr. Mahoney, I drafted an amendment to the Partnership Agreement effecting a name change. I was not made aware of the purpose for the name change.

DATED: This 7th day of June, 1990.

David J. Steingart

Subscribed and sworn to before
me this 7th day of June 1990,
by David J. Steingart.

Jean C. Casaw
Notary Public
My Commission Expires: 3/3/95

JEAN C. CASAW
Notary Public, Ramsey Co., Minn.
My Commission Expires Aug. 8, 1995

AFFIDAVIT

I, JON R. TUMLER, being duly sworn, do depose and state as follows:

1. During the years 1982 through 1987, I was the Director of Government Relations for the Public Securities Association (PSA). My current address is 503 15th Street, S.E., Washington, D.C. 20003.

2. As Director of Government Relations, I was responsible for arranging to have various Senators and Congressmen speak before the PSA. PSA traditionally held a spring and annual meeting wherein various dignitaries, including Senators and Congressmen were invited to address their membership.

3. I have no recollection as to the arrangements for Senator Durenberger's speech before the PSA in October, 1985. Additionally, I do not recall how the fee for such speech was determined.

4. I was informed, by an individual from Piranha Press, that Senator Durenberger intended to promote his book at PSA's annual meeting. As such, it was requested that a table be made available to display the book(s) in the back of the room.

5. The payment for Senator Durenberger's speech was not standard honorarium, but a payment to the Senator as an author. As such, the payment was to be made to Piranha Press, the publisher of Senator Durenberger's book(s).

6. I have no recollection of the $5,500 check, representing payment for Senator Durenberger's appearance, other than it was payable to Piranha Press.

SPECIAL
COUNSEL
HEARING
EX. 80

Durenberger Exhibit 25

7. I did not consider the arrangements for Senator Durenberger's speech to be unusual, unethical or illegal. PSA would not have involved itself in anything it considered illegal.

JON R. TUMLER

SUBSCRIBED AND SWORN TO before me this 13th day of February.

Notary Public

My Commission Expires: 8/25/93.

[SEAL]

AFFIDAVIT

I, R. Duffy Wall, being duly sworn, do depose and state as follows:

1. I am the President of R. Duffy Wall and Associates, Inc., a government relations consulting firm. My office address is 1317 F Street, N.W., Suite 400, Washington, D.C. 20004.

2. At the request of the Ethics Committee's Special Counsel, I executed an affidavit on January 8, 1990. That affidavit describes my invitation to Senator Durenberger to address representatives of our clients on March 26, 1986 at a luncheon program; my understanding of the arrangement between the Senator and his publisher, Piranha-Press; my receipt of a letter from Piranha Press regarding the Senator's appearance; and my recollection of the appearance itself.

3. I was aware at the time of Senator Durenberger's speaking engagement that he had authored a book. I was informed in writing by Piranha Press that it handled the Senator's speaking engagements. Although I did not request the Senator to speak on a particular subject matter, I was aware of the fact the Senator would promote his book.

4. When the Senator arrived at our offices for his speaking appearance, he discovered his aide did not have

Exhibit 26

a copy of the book with him. He sent his aide back to his office to retrieve copies of the book.

5. I had no objection to Senator Durenberger discussing his book at the luncheon. I do, in fact, recall the Senator mentioning his book during his appearance. The Senator's speech was enthusiastically received by those in attendance.

6. On April 18, 1986, in accordance with the instruction I received from Piranha Press, I forwarded a check in the amount of $2,000 payable to Piranha Press, for payment of the Senator's speaking engagement. From my perspective, I saw nothing illegal or unethical in making the payment to Senator Durenberger's publisher and I never told Senator Durenberger that I objected to his arrangement with Piranha Press.

R. Duffy Wall

R. Duffy Wall

City of Washington)
) SS.
District of Columbia)

SUBSCRIBED AND SWORN To Before Me this 7th day of June 1990.

Notary Public

My Commission Expires August 31, 1992

AFFIDAVIT

I, TERRY R. ZACK, being duly sworn, do depose and state as follows:

1. From 1979 until October 1987, I served as the Executive Director of The Washington Campus ("TWC"). Currently I am the Special Assistant to the Resolution Trust Corporation. My office address is 1777 F Street, N.W., Washington, D.C.

2. TWC, founded in 1978, is a non-profit organization that organizes educational programs for business executives and graduate business students on the public policy process and its relationship to corporate management. TWC has standard "teaching modules" on various aspects of the public policy process. These modules may be adapted to meet the needs of individual corporate clients, by including speakers who can address both the policy process and policy issues of interest to the corporate client.

3. TWC arranged such a seminar for the Hospital Corporation of America ("HCA"), which was held in Washington, D.C. on March 24 - 27, 1985. I invited Senator David Durenberger to address this Seminar on March 25th. A copy of my invitation letter, dated February 11, 1985, is appended hereto as Attachment A. I invited Senator Durenberger because he is knowledgeable about the policy process generally, and about health policy in particular as a result of being the Chairman of the Health Subcommittee of the Senate Finance Committee. I was unaware that Senator Durenberger had published a book at the time I issued the invitation to him. I did not invite the Senator to promote his book(s) to the HCA.

4. On my file copy of the invitation letter are my handwritten notes indicating my conversation with Anne Kelly of Senator Durenberger's staff on February 19, 1985. While I do not specifically recall this conversation, my notes indicate that Ms. Kelly confirmed the Senator's appearance before the HCA. In addition, my notes show that Ms. Kelly informed me that Mike Mahoney would contact me regarding the Senator's honorarium.

5. Shortly after my conversation with Ms. Kelly, I sent a letter to Senator Durenberger to confirm his appearance at the HCA seminar. Appended to this letter was a list of the twenty-three participants in the seminar. I believe that this list accurately reflects the number of seminar attendees, as of that time. This is a standard courtesy extended to all speakers. A copy of this letter, including the list of participants, is appended hereto as Attachment B.

SPECIAL
COUNSEL
HEARING
EX. 89

Durenberger Exhibit 27

6. To the best of my recollection, no one ever asked me if TWC would sell or display the Senator's book(s) during the HCA seminar. TWC is an educational organization and the HCA seminar was to be an educational program, and, in general, the promotion or sale of books would not have been appropriate in the context of such a seminar. TWC had never, as far as memory serves me, displayed books during any of its educational seminars.

7. I believe I attended Senator Durenberger's speech at the March 25th HCA seminar, which was held in Room 385 of the Russell Senate Office Building. However, it should be pointed out that even when I was attending the TWC programs as program director, I frequently left the sessions to carry on other business related to TWC. I do not recall if the Senator mentioned his book(s) during his remarks, and I do not recall books being sold or displayed during the seminar.

8. Shortly after the seminar, I drafted a letter to Gary Diamond of Piranha Press. A copy of my notes used to draft this letter is appended hereto as Attachment C. Attached to these notes is a note from my secretary indicating that on April 3, 1985 she spoke with Anne Kelly, who instructed her to have the Senator's check made payable and sent to Piranha Press.

9. On April 3, 1985, I sent Senator Durenberger a letter thanking him for his participation in the seminar and informing him that, at Anne Kelly's request, I had sent the $1,000 honorarium to Piranha Press. A copy of this letter is appended hereto as Attachment D. The next day, I sent a letter to Mr. Diamond, enclosing the $1,000 payment for the Senator's appearance. A copy of this letter and the check is appended hereto as Attachment E.

10. According to a copy of the seminar agenda, Congressman Richard Cheney also addressed the HCA seminar on March 25th. A copy of the seminar agenda for March 25th reflecting Congressman Cheney's speech is appended hereto as Attachment F. I believe that Congressman Cheney was paid an honorarium for his appearance. As far as I am concerned, the payments to both Congressman Cheney and Senator Durenberger were honoraria in exchange for speeches by a Member of Congress.

11. I also invited Senator Durenberger to address a TWC seminar for executives of New England Mutual Life Insurance Company ("N.E. Life") in Washington, D.C. on April 9 - 12, 1985. A copy of my invitation letter, which included an offer of a $1,000 honorarium, is appended hereto as Attachment G. As with the HCA seminar in March 1985, I invited the Senator to discuss the legislative process, not to promote his book(s).

12. Shortly after I issued the invitation to the Senator, I wrote to him to confirm his acceptance and to provide him with a list of the twenty participants in the seminar as was standard practice. Copies of this letter and list are appended hereto as Attachment H.

13. Senator Durenberger addressed the N.E. Life seminar on April 11, 1985 in Room 188 of the Russell Senate Office Building. A copy of the seminar agenda for that date is appended hereto as Attachment I. While I do not recall the Senator's speech, I took notes of his remarks. A copy of my notes is appended hereto as Attachment J. These notes reflect that Senator Durenberger opened his remarks with a reference to his book, Neither Madmen nor Messiahs, to his publisher, and to the fact that his next book would discuss health policy. I do not recall any display of the Senator's books at the seminar and I do not recall being asked to provide any such display.

14. On April 17, 1985, I wrote to Senator Durenberger to inform him that I had sent his honorarium for $1,000 to Piranha Press pursuant to Anne Kelly's instructions. A copy of this letter is appended hereto as Attachment K. Appended hereto as Attachment L are copies of the letter to Mr. Diamond and the check made payable to Piranha Press. I had the Senator's honorarium handled in this manner because of the instructions that my secretary received from Anne Kelly on April 3, 1985, as reflected in Attachment C.

15. I invited Senator Durenberger to address a third TWC seminar in 1985. This seminar was offered for HCA executives on November 11-14, 1985 in Washington, D.C. and was very similar to the HCA seminar held in March 1985. I invited Senator Durenberger to give the same address on the legislative process that he had given at the two previous TWC seminars. A copy of my invitation letter, dated September 20, 1985, is appended hereto as Attachment M.

16. Following my standard procedure for arranging the seminars, I wrote to the Senator on November 1, 1985 to confirm his appearance and provide him with a list of the twenty-seven seminar participants. Copies of this letter and list are appended hereto as Attachment N.

17. Shortly before the seminar, I received a letter from Piranha Press dated November 4, 1985. A copy of this letter is appended hereto as Attachment O. I do not recall receiving such a letter regarding the Senator's previous two speeches at TWC seminars.

18. The content of this letter did not reflect my understanding of the arrangements I had made for Senator Durenberger's appearance. It is not my understanding that I had inquired about a promotional

appearance by the Senator. I do not recall TWC ever receiving the promotional literature mentioned in the letter. In addition, I do not recall any subsequent request or arrangements regarding the display of the Senator's books(s).

19. Senator Durenberger spoke at the HCA seminar on November 12, 1985, in Room 385 of the Russell Senate Office Building. I do not recall if the Senator mentioned his books or any display of the Senator's book(s) at that time. A copy of the seminar agenda for November 12th is appended hereto as Attachment P.

20. After the Senator's appearance on November 12th, I sent a letter to the Senator informing him that his $2,000 honorarium had been sent to Piranha Press, as instructed. A copy of this letter is appended hereto as Attachment Q. The instructions to send the $2,000 payment to Piranha Press were included in the November 4th Piranha Press letter. I do not recall the circumstances by which the honorarium was raised from the originally proposed amount of $1,000. A copy of my letter to Mr. Diamond enclosing the honorarium payment is appended hereto at Attachment R.

21. According to a copy of the seminar agenda, Congressman Cheney also spoke at the HCA seminar on November 12th and to my knowledge was provided with an honorarium. As far as I am concerned, the payments to both Congressman Cheney and Senator Durenberger were honoraria.

Terry R Zack

TERRY R. ZACK

City of Washington
District of Columbia

SUBSCRIBED AND SWORN TO before me this 15th day of February 1990.

Helen G. Calloway

Notary Public

My Commission Expires: 3/14/91

[SEAL]

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OF COUNSEL
ALVIN H. GANDAL
ADMITTED IN D. C. AND OHIO

REPLY TO
Minneapolis

September 26, 1984

Mr. Sam Stern
5005 Old Cedar Lake Road
St. Louis Park, MN 55416

PIRANAH PRESS AUTHOR-PUBLISHER AGREEMENT
OUR FILE NO. 01468-007

Dear Sam Stern:

Enclosed please find the revised Piranah Press Author-Publisher Agreement that we discussed by telephone. Also enclosed please find the proposed advisory opinion we intend to submit to the FEC on this matter. Any input or suggestions you have on the contract or opinion would be appreciated.

Also enclosed please find copies of the advisory opinions referred to in our request letter to the FEC.

These copies are preliminary drafts. I am sending them out at the same time to our client for review. Please contact me at your convenience to discuss any comments or suggestions you have.

Very truly yours,

Donna Hanbery

DONNA E. HANBERY

Enclosures

J15DEH1jm0926841

Exhibit 28

CURTIN, MAHONEY & CAIRNS
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OF COUNSEL
ALVIN H. GANDAL
ADMITTED IN D. C. AND OHIO

REPLY TO
Minneapolis

September 26, 1984

Mr. Tom Horner
Administrative Assistant to
Senator Dave Durenberger
United States Senate
Washington, D.C. 20510

AUTHOR-PUBLISHER AGREEMENT
OUR FILE NO. 01468-007

Dear Tom:

Enclosed please find a suggested Author-Publisher Agreement we discussed by telephone and a proposed advisory opinion. I have also enclosed for your information a cover letter sending the same materials to Gary Diamond's attorney, Sam Stern, and the advisory opinions we have discussed that seem to relate to this matter.

It will be necessary for the Senator and Gary Diamond to work out an amount to fill in the contract as the total payment to be paid for the work and the promotional appearances to be made. You will note that I have set up a payment arrangement so that no payments are made until 1985. I did this to make sure we have ample time to get a response back on our advisory opinion and to permit enough time to go by so that some appearances can be made so that the payments required under the agreement are not a cash drain to Piranah Press.

Please review these materials and call me with any comments or suggestions you have. When I receive a sign-off from you and Gary Diamond's attorney on the advisory opinion, we can submit the request.

Very truly yours,

DONNA E. HANBERY

Enclosures

J15DEH1jm0926842

Exhibit 29

CURTIN, MAHONEY & CAIRNS
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October 1, 1984

Senator Dave Durenberger
353 Russell Senate Office Building
Washington, D.C. 20515

HONORARIUM LIMITATIONS UNDER THE FEDERAL ELECTION CAMPAIGN ACT
AND PUBLIC LAW 98-63
OUR FILE NO. 01248-013

Dear Senator Durenberger:

You have asked for our legal opinion as to whether the payment to you of money by Piranha Press ("Piranha") under the terms and conditions of the Publisher Agreement (the "Agreement") with Piranha would constitute payment to you of an "honorarium" in violation of the limitations imposed on such income under the Federal Election Campaign Act of 1971, as amended (the "Act"), and Public Law 98-63.

We have participated in the preparation of the proposed Agreement with Piranha and the request to the Federal Election Commission for an advisory opinion on your behalf. As to various questions of fact material to our opinion, we have relied upon representations made in the Agreement and upon representations made by yourself and Thomas Horner, your Administrative Assistant. We have also examined letters of public officials, advisory opinions, cases, statutes, documents, records, certificates, opinions, and instruments and have made such other investigation as we have deemed necessary in connection with the opinions hereinafter set forth. We have assumed the authenticity of all documents submitted to us as originals, the genuineness of all signatures, the legal capacity of natural persons, and the conformity to the originals of all documents submitted to us as copies. Based upon the foregoing, we give our opinion to you as follows:

1. Any payment to you by Piranha under the terms and conditions of the Agreement as a royalty based on net proceeds from the

Exhibit 30

Senator Dave Durenberger
October 1, 1984
Page 2

sales of the book(s) would not be considered income from honorarium under the Act and the regulations thereunder or Public Law 98-63.

2. Any payment to you by Piranha under the terms and conditions of the Agreement for promotional appearances to promote the book(s) and Piranha would not be considered income from honorarium under the Act and the regulations thereunder or Public Law 98-63.

Very truly yours,

Curtin, Mahoney & Cairns

CURTIN, MAHONEY & CAIRNS
A Professional Association

CURTIN, MAHONEY & CAIRNS
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October 1, 1984

Senator Dave Durenberger
353 Russell Senate Office Building
Washington, D.C. 20515

HONORARIUM LIMITATIONS UNDER THE FEDERAL ELECTION CAMPAIGN ACT
AND PUBLIC LAW 98-63
OUR FILE NO. 01248-013

Dear Senator Durenberger:

Attached is a copy of our opinion regarding honorarium limitations. This opinion is a "clean" opinion for public review. However, the opinion obviously is based upon the facts and the law as we understand them at this time. For your review and analysis we have set forth below the analysis upon which our opinion is based.

You asked us for an opinion clarifying whether payments to you under your proposed Publisher Agreement (the "Agreement") with Piranha Press (the "Publisher") would violate "honoraria" limitations imposed by the Federal Election Campaign Act and the Jackson Amendment imposing a 30% ceiling on honoraria income for members of Congress.

Under the Agreement you are to grant to the Publisher, for the full term of your copyright(s) in your book(s), the nonexclusive right to print, publish, sell and distribute your book(s) in the United States, Canada and Nations of the European Economic Community. Further, under the Agreement you are required to make such special appearances in promotion of the book(s) and the Publisher as are mutually agreed upon by yourself and the Publisher. You have agreed to make a minimum of 30 such appearances.

As compensation for the granting of the publishing rights and your promotional work, the Publisher has agreed to pay you $100,000, payable in quarterly installments of $12,500, and a

Exhibit 31

royalty of 25% of the net proceeds from sales of the book(s) (less the expenses of printing and publishing).

The Federal Election Campaign Act of 1971, as amended (the "Act"), limits the amount of money that any elected or appointed officers of the Federal Government may accept as an "honorarium" to $2,000 for any appearance, speech or article. 2 U.S.C. §441i (as amended by Public Law 95-216, December 20, 1977).

Federal Election Commission (the "Commission") regulations define "honorarium" as a payment of money or anything of value received by an officer or employee of the Federal Government, if it is accepted as consideration for an "appearance, speech, or article." 11 CFR §110.12(b).

Income realized from the publication of books is not considered "honoraria"; hence, it is not subject to the limitations of 2 U.S.C. §441i. See Advisory Opinion 1975-77. Accordingly, any royalties paid to you from the sale of the book(s) would not be considered an honorarium under the Act and is not, therefore, limited by the Act.

The money to be paid to you for your promotional activities is more problematic. Although it would appear that these payments to you would be for appearances and would be limited under the Act, the Commission has held that money paid to a Senator on a fixed, regular basis for ongoing services to an independent publisher is a stipend and not honoraria income. See Advisory Opinions 1980-76, 1975-46, and 1979-78. The Commission regulations define "stipend" as a payment for services on a continuing basis. CFR 110.12(c)(3).

In Advisory Opinion 1979-78 the Commission held that the payment of a $15,000 serialization fee by The New Yorker magazine to Senator Daniel Moynihan's publisher, Atlantic, Little & Brown, for the first time serialization of a book to be published, of which $12,750 was to be paid to Senator Moynihan, did not constitute an honorarium. The Commission noted that since the fee was negotiated with the publisher and paid by the magazine to the publisher, the fee was additional consideration under the book publishing contract.

In Advisory Opinion 1980-76 the Commission held that the payment to Senator William Proxmire of $100 per month from the Cato Institute for doing a monthly radio program and as a weekly contributor to the David Letterman show did not constitute honorarium income. The Commission noted that an honorarium is distinguished from a stipend "which is a payment for services on a continuing basis, including a salary or other compensation paid by news media. . . . "

In Advisory Opinion 1975-46 the Commission held that the payment to Representative Barbara Jordan for occasional televised commentary did not constitute honoraria. Representative Jordan had entered into an oral agreement with CBS to videotape editorial comments once a month for presentation on the CBS Morning News Show. Representative Jordan received $150 for each taping. The Commission noted that for money to be considered to have been received for an honorarium it must have been paid for a single event and under circumstances that do not imply a continuing compensatory relationship for services. Even though Representative Jordan was not subject to a written continuing contract the Commission felt that the oral agreement contemplated a regular and continuing relationship for services and thus constituted a stipend.

We are of the opinion that payments to be made to you under the Agreement for appearances satisfy the test of being payments for services on a fixed and continuing basis and thus constitute a stipend rather than an honorarium.

In addition to the limitation on receipt of $2,000 per speech, article or appearance, members of Congress are limited with respect to the maximum amount of honorarium income they may receive per year. Under Public Law 98-63, 4 U.S.C. §31-1, no member of Congress shall accept honoraria attributable to any calendar year that total more than 30% of the member's salary during such year.

It is clear from the legislative history that Public Law 98-63 was intended to replace the yearly ceiling on honoraria income that had previously been included in the Act, but had been eliminated in 1981. See Public Law 97-51; Congressional Record June 16, 1983.

The definition of "honorarium" under Public Law 98-63 is identical to that under the Act.

We are of the opinion that Public Law 98-63 should be read in conjunction with the Act and that if a payment does not constitute an honorarium under the Act it does not constitute an honorarium under Public Law 98-63. Since we have determined that the payments to you under the terms and conditions of the Agreement will not constitute honoraria under the Act, we are also of the opinion that such payments will not constitute honoraria under Public Law 98-63.

We suggest that this matter be clearly decided by means of an advisory opinion from the Commission.

We have not been asked to address any issues under the Senate Ethics Rules relating to conflicts of interest and financial disclosure or federal and state income tax treatment.

Very truly yours,

MICHAEL C. MAHONEY

Enclosure

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OF COUNSEL
ALVIN H. GANDAL
ADMITTED IN D. C. AND OHIO

REPLY TO
Minneapolis

October 19, 1984

Office of the General Counsel
Federal Election Commission
1325 K Street N.W.
Washington, D.C. 20463

ATTN: Mr. Bradley Litchfield
Assistant General Counsel

OUR FILE NO. 01468-007

Ladies and Gentlemen:

This letter is written to request an advisory opinion on whether the limitations relating to the receipt of "honoraria," as that term is defined in 2 U.S.C. 441i, would apply in the following transaction:

Senator David Durenberger has written a book entitled Neither Madmen nor Messiahs. The book, as published, is approximately 250 pages long. It is published by an independent publisher, Piranah Press, a division of Diamond Publications ("Publisher"), and will be distributed by the Publisher through traditional and customary channels of distribution. For example, the book is currently offered for sale at B. Dalton Booksellers.

Under the Author-Publisher Agreement, Senator Durenberger as Author has conveyed certain rights in the Work to the Publisher and has agreed to make, over a two-year period, a specified number of promotional appearances for purposes of promoting the book and the Publisher at such times and places as may be agreed upon between the Author and the Publisher.

As compensation for the rights in the Work transferred by Senator Durenberger and for the personal services to be rendered by him

Exhibit 32

in promoting the Work and the Publisher, the Publisher has agreed to pay an agreed to sum in quarterly installments over a two-year period. In addition to these amounts, Durenberger is to receive a royalty based on the net proceeds from sales of the Work.

It is our opinion that none of the income to be received from the Publisher should constitute honoraria under the statute or rules cited above. Our reasons for this opinion are summarized below:

1. The restrictions on receipt of honoraria has been interpreted to exclude income received from books or stipends. To the extent that income is to be paid to the Senator under the Publishing Agreement, it is either payment for the rights to publish the Work or for services to be rendered on a continuing basis to the Publisher over a two-year period.

2. Based on the positions taken in the few advisory opinions that have been given on related issues, it would appear that the income to be paid to the Senator qualifies as a stipend and not an honorarium as it is to be paid on a fixed, regular basis for ongoing services to be rendered to an independent publisher. [See advisory opinions AO 1980-76; AO 1975-46; AO 1975-77.]

Please advise us of your opinion on this matter or if further information is needed.

Very truly yours,

Michael C Mahoney

MICHAEL C. MAHONEY

and

Dona Hanbery

DONNA E. HANBERY
Attorneys for Senator David Durenberger

J15DEH1jm1019843

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OF COUNSEL
ALVIN H. GANDAL
ADMITTED IN D. C. AND OHIO

REPLY TO
Minneapolis

October 19, 1984

Mr. Sam Stern
5005 Old Cedar Lake Road
St. Louis Park, MN 55416

PIRANHA PRESS AUTHOR-PUBLISHER AGREEMENT
OUR FILE NO. 01468-007

Dear Mr. Stern:

Enclosed at the request of Donna Hanbery please find the corrected Piranha Press Author--Publisher Agreement.

Very truly yours,

Lori J. McEvoy
Assistant to
DONNA E. HANBERY

Enclosure

J15LJM1019841

Exhibit 33

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

October 25, 1984

AOR 1984-56

Michael C. Mahoney
Donna E. Hanbery
Curtin, Mahoney & Cairns
Attorneys at Law
4150 Multifoods Tower
Minneapolis City Center
Minneapolis, Minnesota 55402

Dear Mr. Mahoney & Ms. Hanbery:

The Office of General Counsel has your letter of October 19, 1984, requesting an advisory opinion concerning the application of the Federal Election Campaign Act of 1971, as amended.

Your inquiry is under consideration by the legal staff and if additional information is needed, this office will contact you.

In accordance with the Act and Commission regulations, this office will ask the Commission to consider a response to your request at an early date. See 2 U.S.C. § 437f and 11 C.F.R. Part 112.

Sincerely,

N. Bradley Litchfield
Assistant General Counsel

Exhibit 34

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OF COUNSEL
ALVIN H. GANDAL
ADMITTED IN D. C. AND OHIO

REPLY TO
Minneapolis

December 5, 1984

Mr. Thomas Horner
Administrative Assistant
Senator David Durenberger
375 Russell Office Building
Washington, D.C. 20510

ADVISORY OPINION
OUR FILE NO. 01468-007

Dear Tom:

Good news. Enclosed please find the FEC's draft of their advisory opinion on the request we made on behalf of Senator David Durenberger. They have given us a favorable opinion on both counts. First, they say income from the book and royalties is not honorarium income; and, second, they say that the income coming from public appearances is a stipend rather than an honorarium.

We received an advance copy of this opinion December 4, 1984. The opinion will probably become final, but there is an opportunity for public comment on December 6.

I am sending a copy of this to Sam Stern and will follow up with you and Gary Diamond to get final numbers for the actual agreement and to execute the documents.

Very truly yours,

Donna Hanbery

DONNA E. HANBERY

Enclosure

E8HDEHljm1205841

Exhibit 35

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A PROFESSIONAL ASSOCIATION
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OF COUNSEL
ALVIN H. GANDAL
ADMITTED IN D.C. AND OHIO

REPLY TO
Minneapolis

December 5, 1984

Mr. Sam Stern
5005 Old Cedar Lake Road
St. Louis Park, MN 55416

ADVISORY OPINION
OUR FILE NO. 01468-007

Dear Sam:

Enclosed please find a copy of the draft advisory opinion the FEC has given on our request on behalf of David Durenberger. The opinion is exactly what we wanted. It finds the income from royalties on the book and promotional speeches to not be honorarium income.

I will be talking to Tom Horner to get his suggestions on the numbers that should appear in the contract sent to you for review. Hopefully, we can wrap this up in the near future.

Very truly yours,

DONNA E. HANBERY

Enclosure

E8GDEHljm1205841

Exhibit 36

FEDERAL ELECTION COMMISSION
WASHINGTON D C 20463

RECEIVED
DEC 1 1984
CURTIN, MAHONEY & CAIRNS
A PROFESSIONAL ASSOCIATION

December 6, 1984

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

ADVISORY OPINION 1984-56

Michael C. Mahoney
Donna E. Hanbery
Curtin, Mahoney & Cairns
Attorneys at Law
4150 Multifoods Tower
Minneapolis City Center
Minneapolis, Minnesota 55402

Dear Mr. Mahoney and Ms. Hanbery:

This responds to your letter of October 19, 1984, requesting an advisory opinion on behalf of Senator David Durenberger concerning application of the Federal Election Campaign Act of 1971, as amended ("the Act"), to an author-publisher agreement involving Senator Durenberger.

You state that Senator Durenberger has written a book entitled Neither Madmen nor Messiahs. You add that the book is published by Piranan Press, a division of Diamond Publications ("Publisher"), and will be distributed by the Publisher through traditional and customary channels of distribution.

According to your request, under the author-publisher agreement Senator Durenberger has conveyed to the Publisher certain rights in the book and has also agreed to make a specified number of promotional appearances over a two-year period to promote both the book and the Publisher. As compensation for the rights in the book transferred by Senator Durenberger and for the personal services to be rendered by him to promote the book and the Publisher, the Senator will be paid an agreed-to sum in quarterly installments over a two-year period as well as a royalty based on the net proceeds from sales of the book. In light of these facts, you ask whether any of the income

Exhibit 37

to be received by Senator Durenberger from the Publisher would constitute honoraria under the Act or Commission regulations.

Under 2 U.S.C. §441i, no person who is an elected or appointed officer or employee of any branch of the Federal Government shall accept any honorarium of more than $2,000. The Commission's regulations define the term "honorarium" to mean the payment of money or anything of value received by such person as consideration for an appearance, speech, or article. 11 CFR 110.12(b). The Commission has previously determined that income realized from the publication of books is not considered honoraria, and therefore is not subject to the limitations of 2 U.S.C. §441i. See Advisory Opinions 1975-77 and 1978-59. Accordingly, any royalty paid to Senator Durenberger on the basis of the net proceeds from sales of the book would not be considered an honorarium under the Act and regulations and would not be limited.

The Commission also notes that the regulations exclude from the definition of honorarium the term "stipend." A stipend is defined as a payment for services on a continuing basis. 11 CFR 110.12(c)(3). The Commission concludes that the arrangement you have described, whereby the Publisher will pay Senator Durenberger in quarterly installments over a two-year period for promotional appearances, creates a stipendiary relationship. Accordingly, payments made to Senator Durenberger under this agreement would not be viewed as honoraria and therefore would not be subject to limitation under 2 U.S.C. §441i.

The Commission expresses no opinion as to possible application of Senate rules to the described transaction, nor as to any tax ramifications, since those issues are outside its jurisdiction.

This response constitutes an advisory opinion concerning application of the Act, or regulations prescribed by the Commission, to the specific transaction or activity set forth in your request. 2 U.S.C. §437f.

Sincerely yours,

Lee Ann Elliott

Lee Ann Elliott
Chairman for the
Federal Election Commission

Enclosures (AOs 1975-77 and 1978-59)

76041 0711

ADVISORY OPINION 1975-77

Whether Royalties Are Subject
to Limitations on Acceptance
of Excessive Honorariums

This advisory opinion is rendered under 2 U.S.C. §437f in response to a request for an advisory opinion which was submitted by J. Brian Smith, Press Secretary, for Congressman John J. Rhodes, which was published as AOR 1975-77 in the October 1, 1975, Federal Register (40 FR 45295). Interested parties were given an opportunity to submit written comments relating to the request. No comments were received.

The request asks whether royalties from the publication of a book by a Congressman would be limited by the provisions of section 616 of Title 18, United States Code. It is provided in 18 U.S.C. §616 that:

> "Whoever, while an elected or appointed officer or employee of any branch of the Federal Government--
>
> (1) accepts any honorarium of more than $1,000 * * * for any appearance, speech, or article; or
>
> (2) accepts honorariums * * * aggregating more than $15,000 in any calendar year; shall be fined not less than $1,000 nor more than $5,000."

This provision clearly limits honoraria accepted for any appearance, speech, or article. The question then arises as to whether, for purposes of this section, a royalty received for the publication of a book should be treated as identical to an honorarium accepted for an article. As 18 U.S.C. §615 is a criminal statute, the canons of statutory construction require that its language should be strictly construed so that each word will be given only its plain meaning in the absence of strong evidence to the contrary. Thus in this case the Commission concludes that the word "article" should be read narrowly and not interpreted as meaning "any publication."

This view conforms with the explicit intent of Congress with regard to this section:

> "Mr. HUGH SCOTT. * * * I have been asked by one Senator to raise a question as regards publication of books as distinguished from magazine articles. There is a limitation here on honoraria of $1,000. I believe there is an exception that does permit Members of Congress to publish books and to receive compensation for that purpose. Is that correct?
>
> "Mr. CANNON. The intent is that the publishing of a book does not constitute an honorarium under the language used in the bill. * * *"
>
> 120 Cong. Rec. S18526(daily ed., Oct. 8, 1974)
>
> "Mr. FRENZEL. [Presenting comments for the House of Representatives on the Conference Report.] * * * The conference substitute limits honorariums to $1,000 per appearance and a total of $15,000 per calendar year. I concur with the discussion by Senators Scott and Cannon * * *."
>
> 120 Cong. Rec. E10234 (daily ed., Oct. 10, 1974)

Accordingly, it is the opinion of the Commission that royalties from the publication of a book by a Congressman would not be affected by the provisions of 18 U.S.C. §616.

This advisory opinion is issued only on an interim basis pending the promulgation by the Commission of rules and regulations of general applicability.

Date: Oct. 30, 1975

Thos B Curtis

Thomas B. Curtis
Chairman for the
Federal Election Commission

September 20, 1978

AO 1978-59

Honorable Daniel Patrick Moynihan
United States Senate
Washington, D.C. 20510

Dear Senator Moynihan:

This is in response to your letter of July 31, 1978, requesting an advisory opinion on the application of the Federal Election Campaign Act of 1971, as amended ("the Act"), to your receipt of income in connection with the republication of material you wrote some time ago which has now been, or will be, reprinted.

Your letter states that on several occasions you have received requests and have consented to the reprinting of your previously published writings. You add that these requests come from other authors or publishers and are usually "accompanied by a modest fee." Three examples are set forth in your letter:

> A fee from Readers Digest for reprinting an article originally published in 1977 in Commentary;
>
> A fee from Harper and Row for reprinting an article published in 1969 in American Heritage Magazine;
>
> Fees from college text publishers for excerpts from various books published over the past 15 years.

You ask for a Commission opinion clarifying whether these payments would be considered "honoraria" under the Act and Commission regulations. Your letter explains that "no additional work" is required of you in connection with the reprinting and that these payments "most often accrue to me for my copyrights. As such, they are, in effect, royalties. (Or, if you like, rents.)"

As you know, the Act limits the amount of any honorarium that elected or appointed officers of the Federal Government may accept for any "article" (as well as for any "appearance [or] speech") and for any calendar year. 2 U.S.C. §441i (as amended by Public Law 95-216, December 20, 1977). While §441i does not include definitions for "honorarium" or "article," Commission regulations do define those terms as well as others used in §441i.[1] The term "honorarium" means a payment of money or anything of value received by an officer or employee of the Federal Government, if it is accepted as consideration for an appearance, speech, or article. 11 CFR 110.12(b). An "article" means a writing other than a book which "has been or is intended to be published." Income realized from the publication of books is not considered "honoraria;" hence, it is not subject to the limitations of 2 U.S.C. §441i. See Advisory Opinion 1975-77, copy enclosed.

The Commission concludes that payments received as consideration for the reprinting of an article are not excluded from the definition of "honorarium". It is clear that the article is generating income by reason of its reprinting or republication regardless of how that income may be characterized for purposes other than §441i. Whether or not additional effort is required from the author to produce the income from the reprint is irrelevant. The Act and regulations place limits on payments accepted for the publication of any article which "has been or is intended to be published." 11 CFR 110.12(b)(4). Thus, every occasion of publication or republication of an article, other than in a book, by an officeholder which results in payments to the officeholder is an honorarium.

Accordingly, in your specific situations, to the extent payments are accepted and received by you while you are a United States Senator (or other elected or appointed officer or employee of the Federal Government) as consideration for the current reprinting or republication as an article of works you previously wrote (whether the work was originally published as an article or book), those payments are honoraria for articles. However, payments resulting from the current republication or reprinting in a book of material originally published in either book or article form, will be treated as income from the publication of a book and thus will not be subject to limitation under §441i as an honorarium. See AO 1975-77.

---

[1] The 1977 amendments to 2 U.S.C. §441i have effectively superseded the regulatory definition of "accepted" at 11 CFR 110.12 (b)(5), but that definition is immaterial to this opinion.

The Commission expresses no opinion as to possible application of the Senate rules to the described transactions, nor as to any tax ramifications, since those issues are outside its jurisdiction.

This response constitutes an advisory opinion concerning the application of a general rule of law stated in the Act, or prescribed as a Commission regulation, to the specific factual situation set forth in your request. See 2 U.S.C. §437f.

Sincerely yours,

/s/

Joan D. Aikens
Chairman for the
Federal Election Commission

Enclosures(AO 1975-77)

RECEIVED
FEB 20 1985
CURTIN, MAHONEY & CAIRNS
A PROFESSIONAL ASSOCIATION

UNITED STATES SENATE
WASHINGTON, D.C. 20510

DAVE DURENBERGER
MINNESOTA

February 15, 1985

Michael Mahoney, Esq.
Curtin, Mahoney & Cairns
4150 Multifoods Tower
Minneapolis, MN 55402

Dear Mike:

At the direction of Senator Durenberger I am forwarding to you the upcoming invitations that have been accepted on his behalf. These invitations were accepted prior to the agreement between the Senator and his publisher; therefore, the honoraria agreed upon is $2,000 or less, the limit allowed by the U.S. Senate.

Each invitation is marked with the date of the event and the honoraria. Senator Durenberger's staff will coordinate the details of the scheduling the event, including the timing, transportation and other details pertaining to the Senator's participation.

In accordance with the contract between the Senator and his publisher, it is my understanding that Curtin, Mahoney & Cairns, acting as an agent of the publisher, will negotiate the fee, collect the fee and arrange for payment by the publisher to the Senator.

On future scheduling events the staff will not be involved in any compensation connected with an event. We will coordinate with you or another agent of the publisher on scheduling the Senator for events connected with the promotion of his books.

Sincerely,

Thomas F. Horner
Administrative Assistant to
Senator Dave Durenberger

enclosures

NOT PRINTED AT GOVERNMENT EXPENSE

Exhibit 38

MEMORANDUM

TO: Senator Durenberger
FR: Douglas A. Kelley
DATE: February 25, 1986
RE: Meeting with Bill Canfield, Senate Select Committee on Ethics

I visited with Bill Canfield, staff attorney, Senate Select Committee on Ethics today concerning our disclosure of outside income. I informed Canfield that at the time of the inception of Piranha Press you had had a conversation with Clendon Lee and had run the details of Piranha Press by him for his approval. Canfield remembered the conversation you had with Lee because Lee had discussed the issue with Canfield and other staff lawyers at that time. Lee, as you told me, found no problems with the arrangement from the Ethics Committee viewpoint. Canfield was also aware that the Federal Election Commission had subsequently issued an opinion stating that the income from Piranha Press would be considered to be a stipend rather than honoraria.

I asked Canfield whether any follow-up should be made to the Clendon Lee conversation or whether we should request a formal opinion from the Ethics Committee. Canfield informed me that an opinion would be an unnecessary redundancy because the FEC's determination that the income would be stipendiary in nature was dispositive of the issue. Canfield said the FEC was the proper forum to interpret the Federal Campaign Practices Act and that the only concern the Ethics Committee had was whether or not the income derived from the arrangement would be reported as required by Title 2 United States Codes, Section 441(1).

Canfield also informed me that neither Cohen, Hart, nor Moynihan had requested opinions on the income derived from any of their recently published books.

cc: Michael Mahoney

PC Wilson Abney 6/13/88 Read above memo to WA to forewarn him of press calls. WA said FEC has juris on Title 441i ($2k limit) and SSCE has juris on 2 USC 31-1 (40% limit). WA informed me that he would not respond to press inquiries re arrangement. DK

PC Bill Canfield 6/13/88 Read above memo to BC for accuracy. He said it accurately reflected our conversations. DK

Exhibit 39

BARRY GOLDWATER
ARIZONA

United States Senate
WASHINGTON, D.C. 20510

COMMITTEES:
INTELLIGENCE, CHAIRMAN
ARMED SERVICES
TACTICAL WARFARE, CHAIRMAN
PREPAREDNESS
STRATEGIC AND THEATRE NUCLEAR FORCES
COMMERCE, SCIENCE, AND TRANSPORTATION
COMMUNICATIONS, CHAIRMAN
AVIATION
SCIENCE, TECHNOLOGY, AND SPACE
INDIAN AFFAIRS

August 28, 1984

The Honorable David Durenberger
United States Senate
Washington, D. C. 20510

Dear Dave:

Thank you very much for sending me a copy of that book and thank you for having written it. It serves two purposes. It explains to me your deep insight into intelligence by disclosing that you were once an intelligence officer in the service and it makes for very, very interesting reading. I think the title is excellent because too many people in this country try to divide intelligence away from the matters of running government, or conducting war, or just plain conducting business.

I have not read the book in complete detail but I've scanned it enough to know that I'm really going to enjoy it, and I just want to offer you a vote of thanks for having undertaken it. It should prove to be of great value, particularly to people who have not been exposed to the details of intelligence, and I hope and pray that the new members of our committee in the next Congress will each acquire a book and use it as a primer and then an advanced reader because I think, from what I've seen of it, they can gain enough knowledge even to know when Bill Casey's not telling the truth and that, in itself, is something.

Again, my thanks.

With best wishes,

Barry

Barry Goldwater

Exhibit 4c

Edward Zorinsky
Nebraska

United States Senate
WASHINGTON, D. C.

September 7, 1984

Dear Dave,

I appreciate your generosity in seeing that I receive an advance copy of your book, Neither MADMEN Nor MESSIAHS. But particularly appreciative of the fact that you are sharing your concerns and thought-provoking ideas on truly complex defense issues.

I wish you every success in this venture — success in terms that Neither MADMEN Nor MESSIAHS will be read by many.

Thank you very much for personally inscribing my copy.

With best wishes,

Personal regards,

Edward Zorinsky

Exhibit 41

WILLIAM PROXMIRE
WISCONSIN

United States Senate
WASHINGTON, D.C. 20510

September 11, 1984

The Honorable Dave Durenberger
United States Senate
Washington, D.C. 20510

Dear David:

Thanks so much for sending me a copy of your excellent and fascinating new book, "Neither Madmen Nor Messiahs".

I especially appreciate your wise words in, "the Guard and Reserves".

Thank you David and thank you particularly for making this available in such an attractive form.

Sincerely,

William Proxmire, U.S.S.

Exhibit 42

THE UNDER SECRETARY OF DEFENSE
WASHINGTON, D.C. 20301

POLICY

17 SEP 1984

The Honorable Dave Durenberger
United States Senate
Washington, D.C. 20510

Dear Senator Durenberger:

I certainly appreciate your sending me an advance copy of your book, Neither Madmen Nor Messiahs, and your thoughtfulness in signing it personally for me. This weekend gave me a chance to read it and I must say that I like very much the comprehensive and balanced views of defense issues that you presented.

I thought your chapter on theater nuclear weapons and NATO gave a particularly thoughtful discussion of the complex problems inherent in NATO's nuclear strategy. Also, I very much agree with your upbeat stress on Reserves and the role of the National Guard. I, too, share your views that this is a dimension of our defense policy that deserves greater emphasis.

Sincerely,

Fred

Fred C. Ikle

Exhibit 43

Packet - DD has seen

BILL BRADLEY
NEW JERSEY

United States Senate
WASHINGTON, D.C. 20510

COMMITTEES:
FINANCE
ENERGY AND
NATURAL RESOURCES
SPECIAL COMMITTEE ON
AGING

September 1[illegible], 1984

Honorable Dave Durenberger
United States Senate
Washington, DC 20510

Dear Dave: Dave

Thank you for sending me a signed copy of your book Neither Madman nor Messiah,. I found it to be a thought-provoking and instructive analysis of the strengths and weaknesses of our defense establishment.

Because you go beyond generalities to the specifics of weapons sytems characteristics and how they fit into a coherent and intensely consistent national security framework, you help focus the defense debate.

While we may differ on a few of the specifics--I still oppose the B-1, for example,--I find myself in broad agreement with both the general foreign policy framework and the specific defense policy recommendations. Your comments on the reorganization of the Joint Chiefs of Staff, the need for better intelligence at all levels and the importance of nuclear crisis centers are perceptive and, in my view, correct.

In short, with your book you have contributed to a more rational national security. If we all were able to make similar contributions, the Nation would be well served.

Sincerely,

Bill Bradley

BB/btj

Exhibit 44

DD has seen

ASSISTANT SECRETARY OF STATE
WASHINGTON

September 21, 1984

Dear Senator Durenberger:

Thanks so much for sharing your new book, "Neither Madmen Nor Messiahs," with me. I am very pleased to have a copy.

You have written broadly and perceptively, and with sobering realism on some very serious subjects -- perhaps as serious as anything we face in the modern world. It is all very logically put forward. You speak of this as your on-going education, but in the process you are educating all the rest of us. As I said to you yesterday, I admire you for getting it all down in a book.

We all owe you a debt for this outstanding contribution to public consideration of the most important issue we have -- national security.

Thanks again for putting me on your list.

Yours very sincerely,

Tap

W. Tapley Bennett, Jr.

The Honorable
Dave Durenberger,
United States Senate.

Exhibit 45

DD has seen

SPARK M. MATSUNAGA
UNITED STATES SENATE

September 21, 1984

Dear Dave:

Just found your autographed book, Neither Madmen Nor Messiahs, on one of my staff member's desk. I have advised him to go and purchase his own book, so you may have a customer. I am sending you a book which I wrote about the Rules Committee of the House, on which I served 10 years prior to coming over to the Senate.

Hope you'll spend as much time as I will spend time reading yours.

Mahalo and aloha.

Sincerely,

Sparky

Honorable Dave Durenberger
United States Senate
Washington, D.C. 20510

Exhibit 46

POLITICAL SCIENCE DEPARTMENT
MACALESTER COLLEGE
1600 GRAND AVENUE
SAINT PAUL, MINNESOTA 55105
612-696-6290

1984 OCT -1 PM 12:21

September 25, 1984

Dear Senator Durenberger,

Thank you for sending me your book. It is well written and well researched; and an excellent book. I am going to use it for my International Conflict and Resolution class.

Sincerely,

Dorothy Dodge

DD/jq-m

MACALESTER
COLLEGE

Exhibit 47

United States Department of State

Assistant Secretary of State
for Inter-American Affairs

Washington, D.C. 20520

OCT - 1 1984

Dave

Dear Senator Durenberger:

Thank you for sending me a copy of your book, Neither Madmen nor Messiahs.

You do a great service in emphasizing the importance of putting discussions on weapons systems and defense structure into the context of overall goals. As you say, "Our forces must be tailored to our diplomatic purposes: deterrence of an attack on the U.S. or its allies; the preservation of our freedoms; the promotion of an international system that encourages interdependence while permitting fruitful change." This is as true in this hemisphere as it is in Europe and the Pacific.

I also fully agree with your view that good national security policy -- in which I would include foreign policy as well as defense and arms control -- must be built on public understanding and public consensus. I applaud your efforts to help build that understanding and consensus.

Sincerely,

Langhorne A. Motley

The Honorable
Dave Durenberger,
United States Senate.

Exhibit 48

CHIEF OF NAVAL OPERATIONS

9 October 1984

Dear Senator Durenberger,

Thank you for the advance copy of your new book, Neither Madmen Nor Messiahs. As always, I welcome the opportunity to understand better the views of a key participant in the national security policy-making process. This book obviously represents a most significant investment of your thought and energies, and I hope you will continue your efforts to broaden public understanding of defense policies.

Sincerely,

Jim Watk.

JAMES D. WATKINS
Admiral, U.S. Navy

The Honorable David Durenberger
United States Senate
Washington, DC 20510

Exhibit 49

DD has seen.

WILLIAM S. COHEN
MAINE

United States Senate
WASHINGTON, D. C.

October 18, 1984

The Honorable David Durenberger
375 Russell Senate Office
  Building
Washington, D.C. 20510

Dear Dave:

Just a short note to thank you for sending me a copy of your book, Neither Madmen Nor Messiahs: A Policy of National Security for America.

I'm particularly grateful for your reference to me in your foreword. Knowing of the time, energy, and commitment you have devoted to the national security issue, I especially value your kind words.

Jim Schlesinger is on the money in noting that the issues you reflect on in your book are the most fundamental of our nation's problems -- and in placing special value on your insights and observations. Your book will, I know, be consulted often by those who care about the direction of our national security policy.

Again, thanks for sharing it with me.

With best regards, I am

Sincerely,

Bill

William S. Cohen
United States Senator

Exhibit 56

DD

CHAIRMAN OF THE JOINT CHIEFS OF STAFF
WASHINGTON

October 26, 1984

Dear Dave,

Thanks for the copy of "Neither Madmen Nor Messiahs". I read it during a recent trip to Europe. I enjoyed it, and, as you suggest, it should stimulate discussion. Needless to say, I agree with much of it, but disagree with some parts.

I hope we can discuss some of the issues, soon.

Thanks again. Sincerely,

Jack

Exhibit 51

THE WHITE HOUSE
WASHINGTON

Dave

Dear ~~Senator Durenberger~~:

Thank you very much for providing me with an advance copy of your book, Neither Madmen Nor Messiahs. As you did in your white papers on defense spending and arms control, you offer in your book thought-provoking insights into our most important national security policy issues.

Your contribution to the development of bipartisan foreign and defense policies is extremely important. I look forward to continuing to work with you.

Sincerely,

Bud

Robert C. McFarlane

The Honorable Dave Durenberger
United States Senate
Washington, D.C. 20510

Exhibit 52

VOLUME II

EXHIBITS 53–95

The Washington Campus

2620 P Street, N.W.
Washington, D.C. 20007

202 338 6611

Member Institutions
Arizona State University
University of California Berkeley
University of California Los Angeles
Cornell University
Dartmouth College
Georgetown University
Grand Valley State Colleges
Howard University
Indiana University
The University of Michigan
The University of New Mexico
The University of North Carolina at Chapel Hill
The Ohio State University
Purdue University
The University of Texas at Austin

April 1, 1985

The Honorable Richard B. Cheney
United States Congressman
225 Cannon House Office Building
Washington, D.C. 20515

Dear Congressman Cheney:

Thank you very much for taking the time to speak to the executives from United Technologies two weeks ago, and to the executives from Hospital Corporation of America and Northeastern University last week. Your presentations, as always, were given the highest ratings by the participants, who greatly appreciated the sessions in your office and in the Capitol Building.

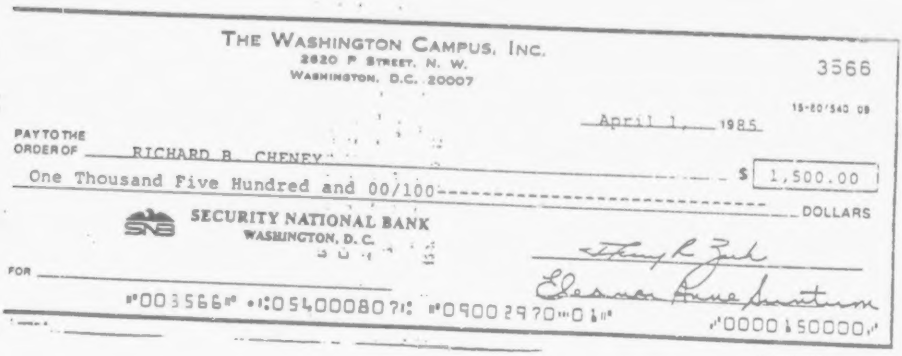
I am enclosing the honoraria for all presentations -- $500 for each session. Again, we are grateful for your continued interest and contribution to Campus programs, and look forward to seeing you soon.

With best wishes,

Sincerely,

Terry R. Zack
Executive Director

TRZ/eas
Enclosure



THE WASHINGTON CAMPUS, INC.
2620 P STREET, N. W.
WASHINGTON, D.C. 20007

3566

15-20/540 09

April 1, 1985

PAY TO THE ORDER OF RICHARD B. CHENEY

$ 1,500.00

One Thousand Five Hundred and 00/100 DOLLARS

SECURITY NATIONAL BANK
WASHINGTON, D.C.

FOR

⑈003566⑈ ⑆054000807⑆ ⑈0900 2970⑈01⑈ ⑉0000150000⑉

LAW OFFICES OF
NIELSEN, MERKSAMER,
HODGSON, PARRINELLO & MUELLER
A PARTNERSHIP INCLUDING A PROFESSIONAL CORPORATION
770 L STREET, SUITE 800
SACRAMENTO, CALIFORNIA 95814
TELEPHONE (916) 446-6752

MARIN COUNTY
591 REDWOOD HIGHWAY, #4000
MILL VALLEY, CALIFORNIA 94941
TELEPHONE (415) 389-6800

SAN FRANCISCO
650 CALIFORNIA STREET, SUITE 2650
SAN FRANCISCO, CALIFORNIA 94108
TELEPHONE (415) 989-6800

June 8, 1990

BY FACSIMILE

Mary C. Albert, Esq.
Olwine, Connelly, Chase,
 O'Donnell & Weyher
1701 Pennsylvania Avenue, NW
Suite 1000
Washington D.C. 20006

Dear Ms. Albert:

At the request and with the permission of our former client, Pathology Practice Association Federal Political Action Committee, I provide herewith a copy of the following documents:

(1) a copy of the face and reverse sides of check no. 144 of the Pathology Practice Association Federal Political Action Committee, dated December 30, 1986, payable to "Durenberger for U.S. Sanate" in the amount of $5,000.00, signed by the undersigned; and

(2) a copy of a "Check Request" form, prepared by an employee of this firm, dated 12/30/86, based on a telephone conversation by that employee with Mr. Paul Johnson, authorizing the preparation of the above-referenced check no. 144.

If you have any further questions about the matter, please contact me.

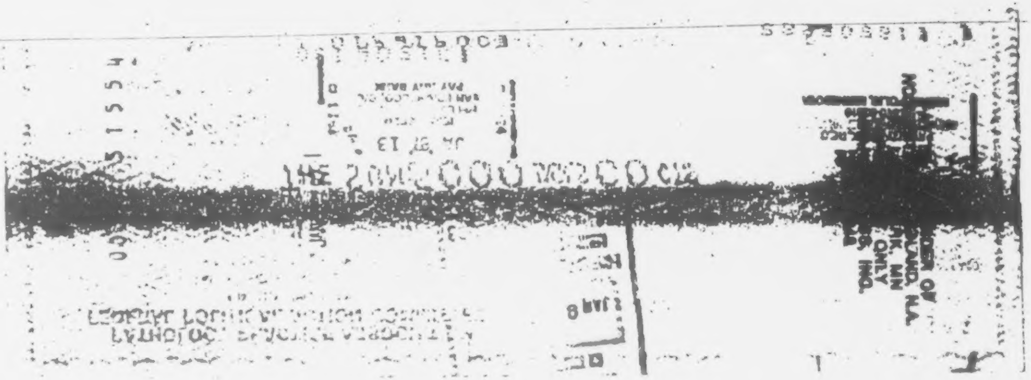
Very truly yours,

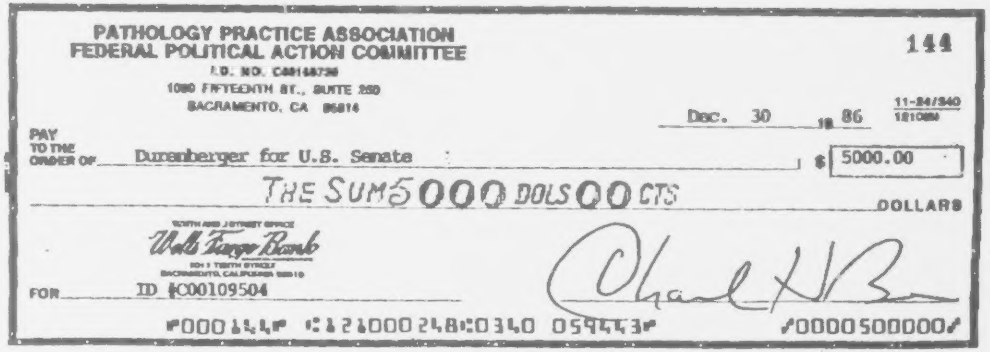
Charles H Bell

CHARLES H. BELL, JR.

CHB/kab

Enclosures





PATHOLOGY PRACTICE ASSOCIATION
FEDERAL POLITICAL ACTION COMMITTEE
I.D. NO. C00148736
1080 FIFTEENTH ST., SUITE 250
SACRAMENTO, CA 95814

144

Dec. 30 19 86

11-24/340
1210

PAY TO THE ORDER OF Durenberger for U.S. Senate $ 5000.00

THE SUM 5000 DOLS 00 CTS DOLLARS

Wells Fargo Bank

FOR ID #C00109504

Chad H B

⑈000144⑈ ⑆121000248⑆0340 059443⑈ ⑈0000500000⑈

CHECK REQUEST

CLIENT tath trac Fed

FILE # 5680.01

(2) Payee: Durenberger for U.S. Senate $ 5000.00 (amour

Name

(3) Address: 8120 Penn Ave South
Minneapolis, ~~Fa~~ Minnesota 55431

Office Minnesota

I.D. # C00109504

(4) Description of Payment:

Requestor Check Approved by: Date:

DISPOSITION OF CHECK

☐ Mail contribution to payee.

☑ Mail contribution to: Paul Johnson

☐ Return contribution to for hand delivery

☐ Will pick up contribution . . . DATE TIME

☐ Other

FOR NHP&M USE ONLY

(1) Check Date 12-30-86

(5) Check No. 144

(6) Check Amt. $ 5000.00

(7 & 8) Chart of Accounts:

#	$	#	$
#	$	#	$
#	$	#	$

Pathology Practice Association
1225 Connecticut Ave., N.W.
Suite 303
Washington, D.C. 20036
(202) 659-0330

DAVID YATES, M.D.
President
STEPHEN BAUER, M.D.
Vice President
FREDERICK E. JOYCE, M.D.
Secretary/Treasurer
EMANUEL ABRAMS, M.D.
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Board Member
ERLO ROTH, M.D.
Board Member
JOHN W. FOFT, M.D.
Board Member
KAI KRISTENSEN, M.D.
Immediate Past President

August 26, 1986

The Hon. David Durenberger
United States Senate
154 Russell Senate Office Building
Washington, D.C. 20510

Dear Senator Durenberger:

As you know, the prospective payment system and other reforms in government health care financing are changing the face of the nation's health care system. We would very much enjoy hearing your views and insights -- as an author and a chief congressional architect of these reforms -- at the annual meeting of the Pathology Practice Association, being held this year on Dec. 2-5 in San Francisco, California.

We invite you to be our luncheon speaker at noon on Friday, Dec. 5, at the Ramada Renaissance Hotel in San Francisco. We would be pleased to make arrangements for honorarium, first-class travel and lodgings.

The meeting is being sponsored jointly by the Pathology Practice Association (a nationwide organization) and the California Society of Pathologists. As hospital-based physicians covered by both Medicare Part A and Part B, pathologists have particular concerns regarding health care financing, such as reimbursement for clinical lab fees and the prospect of DRGs for hospital-based physicians. Your views on such issues, and on health care reform in general, would be welcome.

When you know whether this event will fit into your schedule, or if you need further information in the meantime, please contact Paul Johnson in Washington at 659-0330. I hope you can join us. I am certain our membership would find your remarks interesting and useful.

Sincerely,

David Yates

David Yates, M.D.

cc: Doug Kelley

SCHEDULING INFORMATION

SPEECH
TYPE OF EVENT

12/5/86 12:00 noon
EVENT DATE/TIME

Pathology Practice Association
GROUP NAME

Contact David Yates/ Karen Doyne
Phone 659-0330
Key People ____________

Topic RE: clinical lab fees/DRG's for hospital based physicians

LOCATION OF EVENT San Francisco, CA
Place Ramada Renaissance Hotel
Room ____________
Phone Number ____________
Directions ____________

STAFFING
Briefing Memo ____________
Photo ____________
Speech ____________

8/26/86
REQUEST DATE

SPEECHES
Group Size ~200
Honorarium $5K
(amount)
Room Set-Up ______
Introduction by ______
Taped ______ (y/n) Transcribed ______ (y/n)

FOLLOW-UP
Thanks Sent ______ (date)
Photo ______ (y/n) Sent ______ (date)
Photo to Media ______ (date)
Membership Lists
Received ______ (y/n)
Computerized ______ (y/n)
Filed ______ (y/n)
Regret Sent ______
Greeting Sent ______ (y/n)

MISCELLANEOUS

1

FROM JUDI/DD 14

SCHEDULING INFORMATION

telecopied 10/23/86

SPEECH
TYPE OF EVENT

12/5/86 12:00 noon
EVENT DATE/TIME

Pathology Practice association
GROUP NAME

Contact David yates / Karen Doyne
Phone 202-659-0330
Key People

Topic RE: clinical lab fees/DRG's for hospital based physicians

OCATION OF EVENT San Francisco, CA
Place Ramada Renaissance Hotel
Room
Phone Number
Directions

FFING
Briefing Memo
Photo
Speech

8/26/86
QUEST DATE

[illegible]
Group Size ~200
Honorarium $5K
(amount)
Room Set Up
Introduction by
Taped (y/n) Transcribed

FOLLOW-UP
Thanks Sent (date)
Photo (y/n) Sent (date)
Photo to Media (date)
Membership Lists
Received (y/n)
Computerized (y/n)
Filed (y/n)
Regret Sent
Greeting Sent (y/n)

MISCELLANEOUS

Pathology Practice Association

1225 Connecticut Ave., N.W.
Suite 303
Washington, D.C. 20036
(202) 659-0330

DAVID YATES, M.D.
President
STEPHEN BAUER, M.D.
Vice President
FREDERICK E. JOYCE, M.D.
Secretary/Treasurer
EMANUEL ABRAMS, M.D.
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GEORGE BRANAM, M.D.
Board Member
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Board Member
KAI KRISTENSEN, M.D.
Immediate Past President

August 26, 1986

The Hon. David Durenberger
United States Senate
154 Russell Senate Office Building
Washington, D.C. 20510

Dear Senator Durenberger:

As you know, the prospective payment system and other reforms in government health care financing are changing the face of the nation's health care system. We would very much enjoy hearing your views and insights -- as an author and a chief congressional architect of these reforms -- at ~~the annual meeting~~ of the Pathology Practice Association, being held this year on Dec. 2-5 in San Francisco, California.

We invite you to be our luncheon speaker at noon on Friday, Dec. 5, at the Ramada Renaissance Hotel in San Francisco. We would be pleased to make arrangements for honorarium, first-class travel and lodgings.

The meeting is being sponsored jointly by the Pathology Practice Association (a nationwide organization) and the California Society of Pathologists. As hospital-based physicians covered by both Medicare Part A and Part B, pathologists have particular concerns regarding health care financing, such as reimbursement for clinical lab fees and the prospect of DRGs for hospital-based physicians. Your views on such issues, and on health care reform in general, would be welcome.

When you know whether this event will fit into your schedule, or if you need further information in the meantime, please contact Paul Johnson in Washington at 659-0330. I hope you can join us. I am certain our membership would find your remarks interesting and useful.

Sincerely,

David Yates

David Yates, M.D.

cc: Doug Kelley

MEMORANDUM

Senator - If you're in late tomorrow night could we take a few minutes to touch base on scheduling?

TO: Senator

FROM: Jodi

DATE: September 30, 1986

RE: December Scheduling Requests

COPIES TO: Doug Kelley

ACTION: F.Y.I. but I also need to have a scheduling meeting before you leave to make decisions on these and others.

Before your dinner tonight with Paul Hewitt, I need to fill you in on a couple of scheduling requests for December. Paul will be mentioning a possible A.G.E. meeting with Don Kennedy of Sanford. Don would like to schedule something at Sanford, or nearby, sometime before the end of this year.

I bring this up because when Paul approached me regarding Don Kennedy and a possible date I told him that you did have two speech requests in the San Fransisco area for Dec. 5th and if you were interested we could do all this in one trip.

The two speech requests are:

1. Remarks to the Pathology Practice Association in San Francisco (this is the group Karen Doyne represents)

Date: 12/5/86	**Time:** 12:00 noon
$$: 5K	**Group Size:** 200

Re: clinical lab fees/DRG's for hospital based physicians

2. Remarks to the Hospital Corporation of California in Monterey, Ca

Date: 12/5/86	**Time:** 12:00 noon
$$: 5K	**Group Size:** 200

Re: what DD sees happening in federal health care policy

Monterey is approximately 2 hours driving time from San Francisco. It's 35 minutes by air and there are flights leaving every hour (four flights leave between 12:00noon and 1:00pm). The speech requests are for the same time, but both groups want you so bad that I'm sure we can adjust the times.

I was just given the information that you will be in Boston on the evening of Dec. 1 and the morning of the 2nd.
I've also been in contact with Tim Conlan about the rural conference in Minnesota during this time period. He told me they were aiming for sometime between Dec. 2-4, but they only need a day and a half.

PIRANHA
PRESS
Gary L. Diamond
Publisher

MEMORANDUM

TO: Ms. Karen Doyne
Pathology Practice Associates
1225 Connecticut Avenue NW
Suite 303
Washington, DC 20036

FROM: PIRANHA PRESS

DATE: OCTOBER 27, 1986

RE: SPEAKING ENGAGEMENT OF SENATOR DURENBERGER

We have received information from Senator Dave Durenberger's office that you have requested an appearance by him before your organization.

Senator Durenberger has entered into an exclusive arrangement with us under which we handle the arrangements for the sale and promotion of his books as well as his appearances. If you have not already been contacted, you will be contacted by the law firm which represents Senator Durenberger to review the terms of our arrangement with the Senator, the legal restraints, if any, and the fees and travel arrangements for his appearance.

If you have any questions, please contact Michael C. Mahoney Esq., at (612) 333-5411.

cc: Michael C. Mahoney, Esq.

4504 EXCELSIOR BLVD. · MINNEAPOLIS, MI
.6 PHONE (612) 920-7711

THANK YOUS FOR CALIFORNIA TRIP:

HOSPITAL CORPORATION OF CENTRAL CALIFORNIA
5771 N. Fresno St., Suite 110
Fresno, CA 93710

1. J. Michael "Mike" Gallagher, President
2. Kerri Elliott - handled arrangements and got private plane
3. John Ferman, Sr. VP of the CA Assn. of Hospital & Health Systems - WAS HE ON THE PRIVATE PLANE TO SAN FRANCISCO?

PATHOLOGY PRACTICE ASSOCIATION
1225 Connecticut Ave., N.W., Suite 303
Washington, D.C. 20036

1. David Yates, M.D., President
2. Paul Johnson, Fleishman-Hillard, Inc. - picked you up at the airport
3. Karen Doyne - handled arrangements

A.G.E.

1. Donald Kennedy, President, Stanford University
2. Governor Richard Lamm
3. Paul Hewitt

MERRITT PERALTA MEDICAL CENTER
450 Thirtieth St.
Oakland, CA 94609

1. Wayne Thompson
2. Skip Huber, Chairman of the Board
3. Bob Albo - golf partner
4. Lee Emerson, President of Gilmore Steel, golf partner

OTHERS

Don McNeely - DID HE PICK YOU UP AT THE AIRPORT?

PLEASE WRITE "Sorry I couldn't make it" note to:

Governor Robert D. Orr, President of the Council of State Governments
Office of the Governor, Indianapolis, IN 46204-9797

FRIDAY, DECEMBER 5, 1986

~~8:00am OPTIONAL: Press conference~~

Central

9:00 am — Remarks to the Hospital Corporation of California at the Hyatt Regency Conference Center re: what DD sees happening in federal health care policy

10:00 am — Depart for the airport/they can provide private plane.

10:30 am — Depart Monterey for San Francisco on United Airlines flight #3271

11:00 am — Arrive San Francisco - representative of the Pathology Practice Association to meet and drive to the Ramada Renaissance Hotel, 55 Cyril Magnin
phone: 415-392-8000

or Wayne Thompson can meet w/limo

11:30 noon — Remarks to the Pathology Practice Association re: clinical lab fees/DRG's for hospital based physicians

12:15 pm — Depart for Stanford University in Palo Alto Wayne Thompson can drive

1:15 pm — Remarks to an A.G.E. Luncheon at Stanford University

2:30/3:00 pm — Luncheon to end/Wayne Thompson to drive to Merritt Peralta Medical Center, 450 30th St., Oakland
phone: 415-273-8139

Claremont
Cnty Club
5295 Broadway Terrace
Oakland 94618

4:30-5:30 Mtg w/reps of Merritt Peratta Medical Center

6-8 pm — 3FC dinner hosted by Wayne Thompson at the Health Education Center, Merritt Peratta

Karin should call Tamara

Overnight at:

Claremont Cnty Club 415-655-4000 (main # ask for the HEC)
415-653-6789

DD must bring clothes
& golf clubs tonight

Wayne
415-273-8139

347-5385

DECEMBER 3, 1986

Remarks to the "Coping with Change: Rural America in Transition" conference in Minnesota s: TC

DECEMBER 5, 1986

#5KP Remarks to the Hospital Corporation of California in Monterey, CA c: Kerry Elliott re: what's happening in federal health care policy

#5KP Remarks to the Pathology Practice Association in San Francisco, CA c: Karen Doyne re: clinical lab fees/DRG's for hospital based physicians

Remarks to the A.G.E. Luncheon at Stanford University in Palo Alto, CA c: Paul Hewitt re: A.G.E.

#2K Honoraria Remarks to representatives of Merritt Peratta Medical Center in Oakla CA c: Wayne Thompson re: health issues

DECEMBER 8, 1986

Panel discussion at the Council of State Governments Annual Meeting in Orlando, FL c: Bob Rainshuttle re: changig state/federal role CANCELLED

DECEMBER 10, 1986

Remarks to the A.G.E. Luncheon in Denver, Colorado c: Paul Hewitt re: A.G.E. CANCELLED

DECEMBER 11, 1986

Remarks to the Health Future Foundation in Omaha, NE c: Chuch Monasee re: it's a full day health conference

Dec

3 No$

0 H

2 P

[illegible] Other

STIPEND FOR 1986

TOTALS AS OF DECEMBER 31, 1986

$131,000.00 Total earned from speeches given

Monthly Breakdown

January:	8 speeches given	Total earned:	$20,000.00
February:	7 speeches given	Total earned:	$17,000.00
March:	6 speeches given	Total earned:	$11,500.00
April:	9 speeches given	Total earned:	$17,500.00
May:	6 speeches given	Total earned:	$12,000.00
June:	0 speeches given	Total earned:	$---------
July:	3 speeches given	Total earned:	$ 9,000.00
August:	4 speeches given	Total earned:	$ 8,000.00
September:	5 speeches given	Total earned:	$10,000.00
October:	2 speeches given	Total earned:	$ 7,000.00
November:	3 speeches given	Total earned:	$ 9,000.00
December:	2 speeches given	Total earned:	$10,000.00
TOTALS:	55 speeches		$131,000.00

SPEECHES

(Senate in recess until 1/23/86

✓Remarks to a health luncheon in Puerto Rico c: Fred Graefe on January 2, 1986. Amount $2.5K
Letter on file

✓Remarks to the American Medical Association in Palm Springs, CA c: Jackie Lycett (619)340-3911 on January 6, 1986. Amount $5K
AMA paid Penny Durenberger's airfare to and from Palm Springs
Letter on file

✓Meeting with representatives of Lockheed Corp. in Burbank, CA c: George Kidd on January 6, 1986. Amount $2K
Letter on file

✓Remarks to the Hospital Council of Southern California and to the Board members of Cedars-Sinai Medical Center in Los Angeles, CA c: Yoshi Honkawa (213)855-5701 on January 7, 1986. Amount $2K and $1K respectively.
Hospital Council paid Senator's flight from Palm Springs to Los Angeles

stipend 1986
page two

✓Meeting with representatives of TRW in Los Angeles, CA c: Jack Carter on January 8, 1986. Amount $2K
TRW paid Senator's flight from Los Angeles to Minneapolis and hotel expenses for 3 nights.
Letter on file

Senate Reconvenes

Breakfast discussion with representatives of the American Insurance Association in Washington, D.C. c: Mike Farrell on Janaury 24, 1986. Amount $1.5K

Remarks to Financial Executives Institute Meeting in Washington, D.C. c: Mike Quaranta on January 30, 1986. Amount $2K

Remarks to Center for Economic Policy Research at Stanford University at Palo Alto, CA c: Michael Boskin on January 31, 1986. Amount $2K ($8K to AGE/AGE convered all expenses)

← Dates of travel
1/30 - 1/31 [illegible]
2/1 [illegible]

Remarks to the American Hospital Association in Washington, D.C. c: Patti Goldman on February 3, 1986. Amount $2K

Remarks to the National Association of Alcoholism Treatment Programs in Washington, D.C. c: Fred Graefe on February 5, 1986. Amount $2K
Letter on file

Recess 2/7-17

✓Remarks to the American Association of Equipment Lessors in Palm Springs, CA c: John Windburn on February 17, 1986. Amount $5K
AAEL paid all Senator's expenses
Letter on file

Dates of travel
2/15-17/86

Remarks to the Invest to Compete Alliance in Washington, D.C. on c: Jeanne Campbell on February 21, 1986. Amount $2K

✓Remarks to the American Medical Association in Chicago, IL c: Michael Schick on February 21, 1986. Amount $2K
AMA paid Senator's airfare from Washington to Chicago to Minneapolis
Letter on file

Dates of travel
2/21/86 Friday

Remarks to the "Ad Hoc Committee for Western Utilities" in Washington, D.C. c: Clyde Wheeler on February 26, 1986. Amount $2K
Letter on file

stipend 1986
page three

✓Remarks to the Homebuilders Association in Tucson, AZ c: John Barnes on February 28, 1986. Amount $2K
Homebuilders Association paid the Senator's airfare from Washington to Tucson to Phoenix to Boston and hotel expenses for one night

Dates of travel
2/23 friday
3/3 morn

Remarks to the Securities Industry Association in Washington, D.C. c: Stephan Small on March 4, 1986. Amount $2K
Letter on file

Remarks to the National Association of Bond Lawyers in Washington, D.C. c: Theodore Hester on March 4, 1986. Amount $2K
Letter on file

Remarks to the Council of Industrial Development Bond Issuers in Washington, D.C. c: Ken Kirk on March 11, 1986. Amount $2K
Letter on file

Remarks to the "Policy & Politics Medical Rehabilitation in the Next Decade" conference sponsored by Capitol Associates, Inc. in Washington, D.C. on March 18, 1986 c: Debbie Hardy. Amount $2K
Letter on file

Remarks to Owens Illinois top officers in Washington, D.C. on March 18, 1986 c: Bea Bleicher. Amount $2K
Letter on file

Remarks to the Association of Metropolitan Water Agencies in Washington, D.C. on March 21, 1986 c: Ken Kirk. Amount $1.5K
Letter on file

Recess → 3/27 – 4/7

✓Remarks to the Chicago Council on Foreign Relations in Chicago, IL c: Clark Andersen on April 4, 1986. Amount $1K ←

Dates of travel
2/4 4 pm to Chi
2/5 out to DC

Remarks to the American Podiatric Medical Association in Chicago, IL c: John Carlson on April 5, 1986. Amount $2K
APMA paid the Senator's airfare from Minneapolis to Chicago to Washington
Letter on file

Remarks to the Health Industry Distributors Association in Washington, D.C. c: Bob Wilbur on April 7, 1986. Amount $2.5K
Letter on file

stipend 1986
page four

Remarks to the National Grocers Association in Washington, D.C.
c: Dick Bolger on April 7, 1986. Amount $2K
Letter on file

Remarks to the American Protestant Health Association in Washington, D.C. c: Fred Graefe on April 16, 1986. Amount $2K
Letter on file

Remarks to the National Association of Container Distributors in Washington, D.C. c: John Slater on April 17, 1986. Amount $2K
Letter on file

Breakfast discussion with Finley, Kumble, Wagner law firm in Washington, D.C. c: Fred Graefe on April 25, 1986. Amount $2K
Letter on file

Breakfast discussion with Williams & Jensen law firm in Washington, D.C. c: Kathy Burke on April 29, 1986. Amount $2K
Letter on file

Remarks to Duffy Wall & Associates in Washington, D.C. c: Duffy Wall on April 30, 1986. Amount $2K
Letter on file

[illegible]
5/2 Friday to Ber
5/4 to DC.
5/4 DC to Bost

✓Remarks to Prudential-Bache in Bermuda c: Tom O'Hara on May 3, 1986. Amount $2K
Senator travelled on a private plane to and from Bermuda with Tom O'Hara. Prudential paid hotel expenses for two nights

Remarks to the Washington Discussion Group in Washington, D.C. on c: Caroline Fitzsimmons on May 8, 1986. Amount $2K
Letter on file

Remarks to the Washington Representatives Breakfast in Washington, D.C. c: Paula Tranfaglia on May 14, 1986. Amount $2K
Letter on file

Rillos
5/26 to 6/2

— Remarks to the Midwest Pension Conference in Chicago, IL c: Peter Kelley on May 19, 1986. Amount $2K (The Midwest Pension Conference paid the Senator's airfare from Washington to Minneapolis to Chicago to Washington)

Dates of travel
itinerary
5/19 Mpls to Chic
speech
then 5/19 Chic
DC

Remarks to the American International Automobilers Association in Washington, D.C. c: Bill Kendall on May 20, 1986. Amount $2K.

Remarks to the Montgomery County Medical Society Annual Meeting in Bethesda, MD c: Harold Frye on May 20, 1986. Amount $2K
Letter on file

✓Remarks to the Outpatient Opthalmic Surgery Society Annual Meeting in San Diego, CA c: Mike Romansky on July 19, 1986. Amount $5K. All expenses paid
Letter on file

Dates of travel
7/18 - 7/20

✓Remarks to Warner Lambert Co. in Morris Plains, NJ c: Brad Gary on July 21, 1986. Amount $2K. Warner Lambert transported Senator by company jet from Boston to Morris Plains and paid airfare from Laguardia to Washington Dulles
Letter on file

Dates of travel
7/21

Remarks to Equitable Life in Washington, D.C. c: Theresa Doyle on July 29, 1986. Amount $2K

Remarks to the Fertilizer Institute in Washington, D.C. c: Diane Bateman on August 5, 1986. Amount $2K
Letter on file

Remarks to Pfizer representatives in Washington, D.C. c: Steve Conafay on August 12, 1986. Amount $2K
Letter on file

Remarks to the American Society of Association Executives in Washington, D.C. c: Jack Ale on August 13, 1986. Amount $2K
Letter on file

Remarks to the American Association of Nurse Anesthetists National Convention in Washington, D.C. c: Dick Verville on August 14, 1986. Amount $2K

Recess
8/15 - 9/7

Remarks to the Council for Responsible Nutrition in Washington, D.C. c: Mart Cowan on September 10, 1986. Amount $2K
Letter on file

Remarks to the clients of A.B. Laffer Associates in Washington, D.C. c: Wendy Constantino on September 16, 1986. Amount $2K
Letter on file

Remarks to the American College of Cardiology Government Relations Committee in Washington, D.C. c: Beth Prichard on September 17, 1986. Amount $2K
Letter on file

Remarks to the National Association of Senior Living Industries in Washington, D.C. c: Fred Graefe on September 25, 1986.
Amount $1K
Letter on file

Remarks to the American Banker's Association in Washington, D.C. c: Nina Gross on September 26, 1986.
Amount $2K

Remarks to 300 General Electric Managers in Washington, D.C. c: Phil Peter on September 30, 1986. Amount $2K

Remarks to the Renewable Fuels National Conference on Alcohol Fuels in Washington, D.C. c: Eric Vaughn on October 1, 1986.
Amount $2K

✓Remarks to the U.S. Health Corporation of Ohio in Columbus, OH c: Anne Klie on October 11, 1986. Amount $5K
The U.S. Health Corporation of Ohio paid airfare from Washington to Columbus to Chicago to Minneapolis, hotel expense for one night, and ground transportation
Letter on file

Dates of travel
[illegible]
10/10 [illegible]
10/11 to MF

Recess Sine Die
10/17/86

stipend 1986
page seven

✓Remarks to the Health America Corporation in Atlanta, GA c: Sandy Mayson on November 14, 1986. Amount $5K
The Health America Corporation paid airfare expense from Minneapolis to Atlanta to Washington

Dates of travel
11/14/86

Remarks to the National Rural Electric Association in Washington, D.C. c: Rob Lively on November 18, 1986. Amount $2K

✓Remarks to the American Group Practice Association in Boston, MA c: Don Fisher on November 20, 1986. Amount $2K.
The American Group Practice Association paid airfare from Chicago to Boston to Washington, hotel expense for one night, and ground transportation
Letter on file

Dates of travel
11/19-20

✓Remarks to the Hospital Corporation of California in Monterey, CA c: Kerry Elliott on December 5, 1986. Amount $5K.
The Hospital Corporation of CA paid airfare from Washington to San Francisco to Monterey, hotel expense for one night, ground transportation, and the cost of a private jet from Monterey to San Francisco ← Dates of travel
12/4-7/8

✓Remarks to the Pathology Practice Association in San Francisco, CA c: Karen Doyne on December 5, 1986. Amount $5K.
The Pathology Practice Association paid for airfare from San Francisco to Minneapolis to Washington and ground transportation in San Francisco

THE NATIONAL REAL ESTATE INVESTMENT FORUM
430 NORTH MICHIGAN AVENUE
CHICAGO. ILLINOIS 60611-4091
(312) 670-6760

April 29, 1985

Mr. Gary Diamond
Piranha Press
4504 Excelsior Boulevard
Minneapolis, Minnesota 55416

Dear Mr. Diamond,

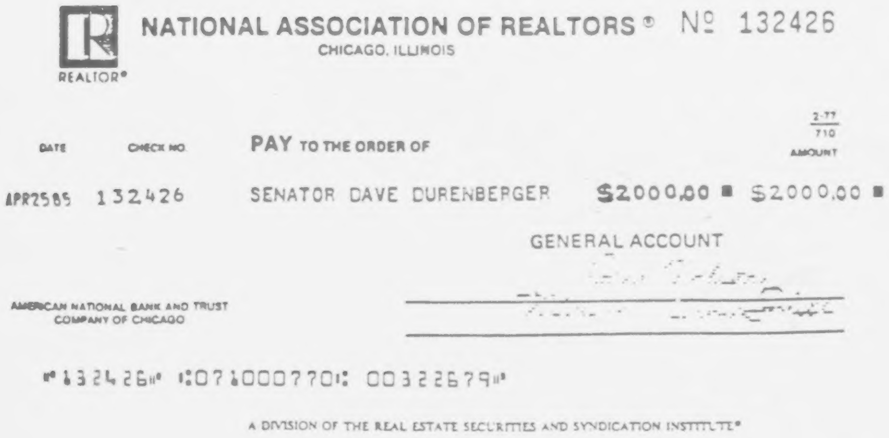
I have enclosed a check for $2,000 made payable to Senator Dave Durenberger as an honorium for his luncheon address at our program, "The Regulators and You," which was held on April 19, 1985 in Washington, D.C. Ann Kelly, a member of his staff, asked me to forward the check to you.

If you have any questions, please do not hesitate to contact me at the telephone number listed on the above letterhead. Thank you for your attention.

Very truly yours,

Lisa Johnson
Lisa B. Johnson
National Real Estate Investment Forum
Coordinator

Encl.



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DATE	CHECK NO.	PAY TO THE ORDER OF		AMOUNT
APR2585	132426	SENATOR DAVE DURENBERGER	$2000.00 ■	$2000.00 ■

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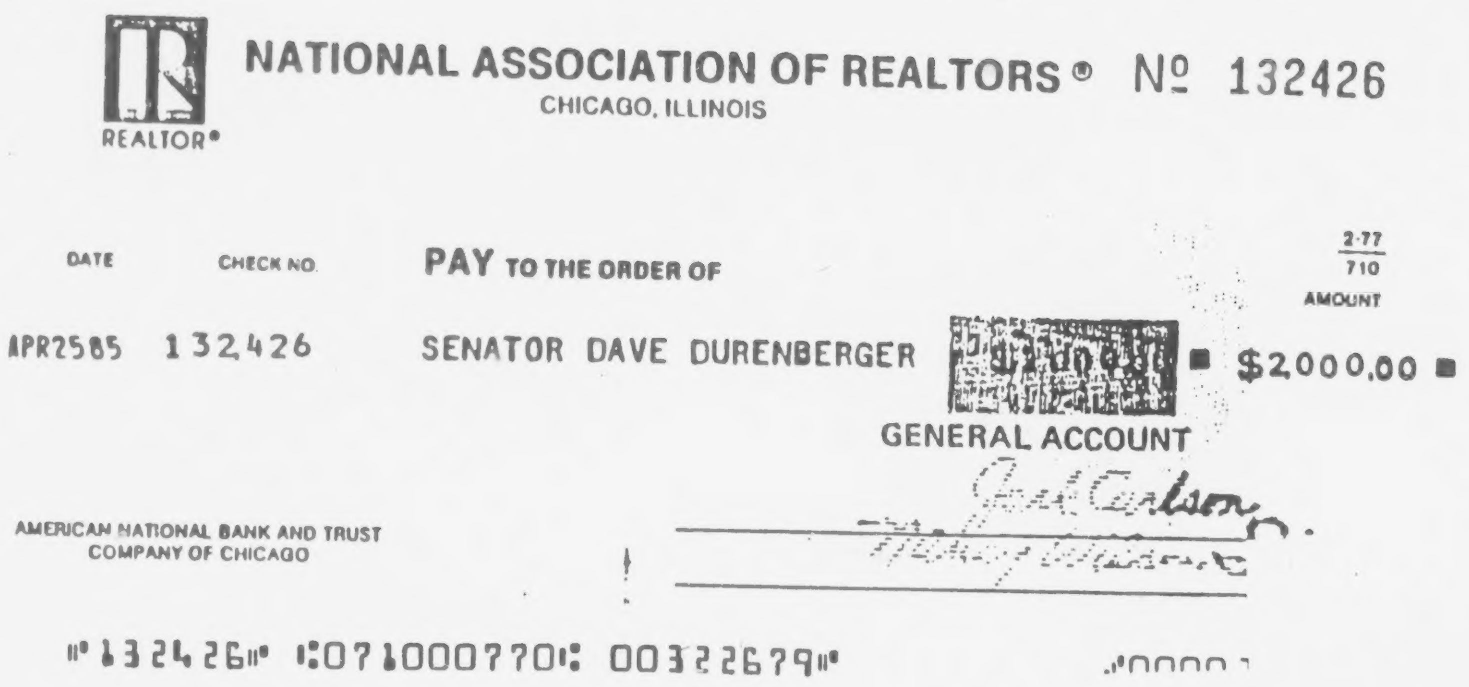

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Jack Carlson

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Mayflower Hotel—Washington, D.C.
April 26 - May 1, 1987
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Louis A. Wilson
Peter Wright

December 13, 1985

Mr. Gary Diamond, President
Piranha Press
4504 Excelsior Blvd.
Minneapolis, MN 55416

RE: Promotional Appearance - Senator David Durenberger
November 19, 1985 - Washington, DC

Dear Mr. Diamond:

Per your letter dated November 18, enclosed please find an honorarium in the amount of $2,000 for Senator Durenberger's appearance.

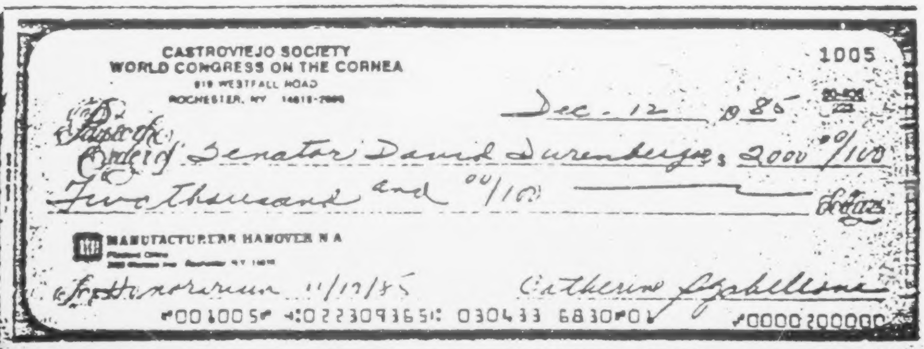
Very truly yours,

James V. Aquavella, M.D.

JVA:ht
Encl.

cc: Michael A. Lemp, M.D.

James V. Aquavella, M.D. Rochester Eye Institute 919 Westfall Road Rochester, N.Y. 14618 Telephone (716) 271-1530
ichael A. Lemp, M.D. Center for Sight Georgetown University Medical Center 3800 Reservoir Road, N.W. Washington, D.C. 20007 Telephone (202) 362-7505



CASTROVIEJO SOCIETY
WORLD CONGRESS ON THE CORNEA
819 WESTFALL ROAD
ROCHESTER, NY 14618-[illegible]

1005

Dec. 12 19 85

Pay to the Order of Senator David Durenberger $ 2000 00/100

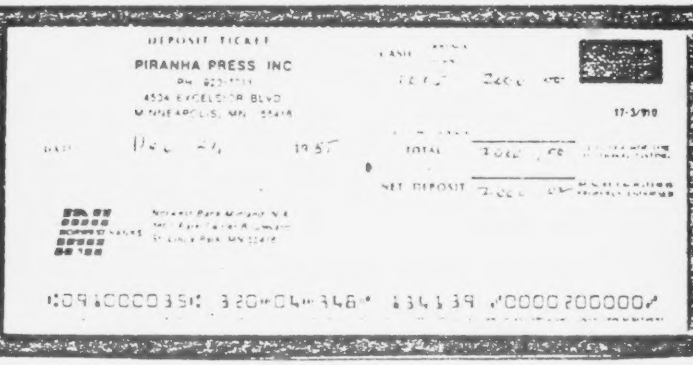
Two thousand and 00/100 Dollars

MANUFACTURERS HANOVER N A

For Honorarium 11/12/85

Catherine

⑈001005⑈ ⑆022309365⑆ 030433 6830⑈01 ⑈0000200000



DEPOSIT TICKET

PIRANHA PRESS INC
PH. 922-[illegible]
4534 EXCELSIOR BLVD
MINNEAPOLIS, MN 55416

CASH

[redacted]

2000 00

17-3/910

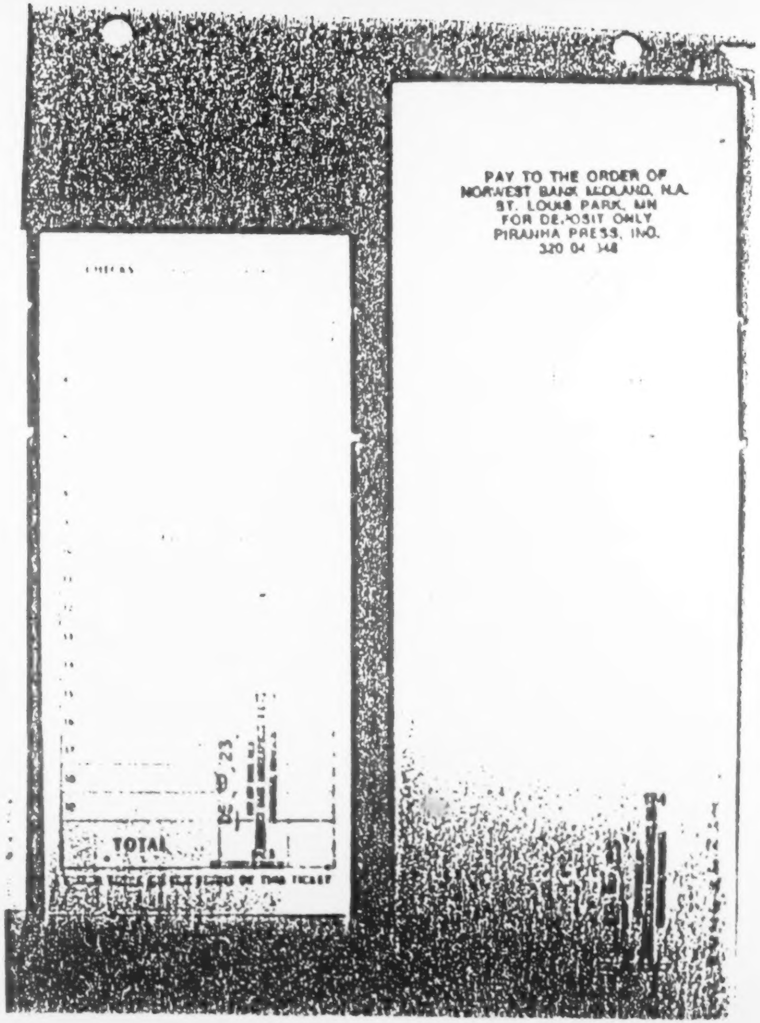
DATE Dec 24 1985

TOTAL 2000 00

NET DEPOSIT 2000 00

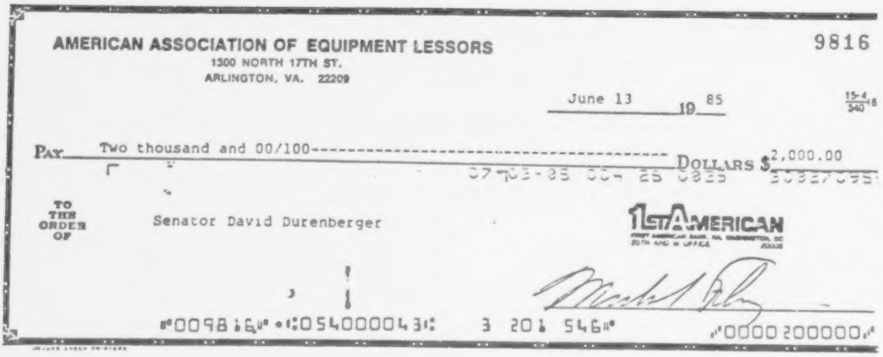
Norwest Bank Midland N.A.
St. Louis Park MN 55416

⑆091000035⑆ 320⑈04⑈346⑈ 134139 ⑈0000200000⑈



PAY TO THE ORDER OF
NORWEST BANK MIDLAND, N.A.
ST. LOUIS PARK, MN
FOR DEPOSIT ONLY
PIRANHA PRESS, INC.
320 04 348

TOTAL



AMERICAN ASSOCIATION OF EQUIPMENT LESSORS
1300 NORTH 17TH ST.
ARLINGTON, VA. 22209

9816

June 13 19 85

15-4/540

PAY Two thousand and 00/100-- DOLLARS $2,000.00

07-03-85 004 25 0825

TO THE ORDER OF Senator David Durenberger

1st AMERICAN

009816 054000043 3 201 546 0000200000

PAY TO THE ORDER OF
NORWEST BANK MIDLAND, N.A.
ST. LOUIS PARK, MN
FOR DEPOSIT ONLY
PIRANHA PRESS, INC.
320 01 348 5 9 4 1

PAY ANY BANK P.E.G.
NORWEST
BANK
MIDLAND, N.A.
17-3 17-3

JUL -1 85

2-27 PAY ANY BANK P.E.G. 7-27
F.R.B. BALTIMORE MD 052000278 1
07-03-85 0004 26 0625 306270958

JY 85 01

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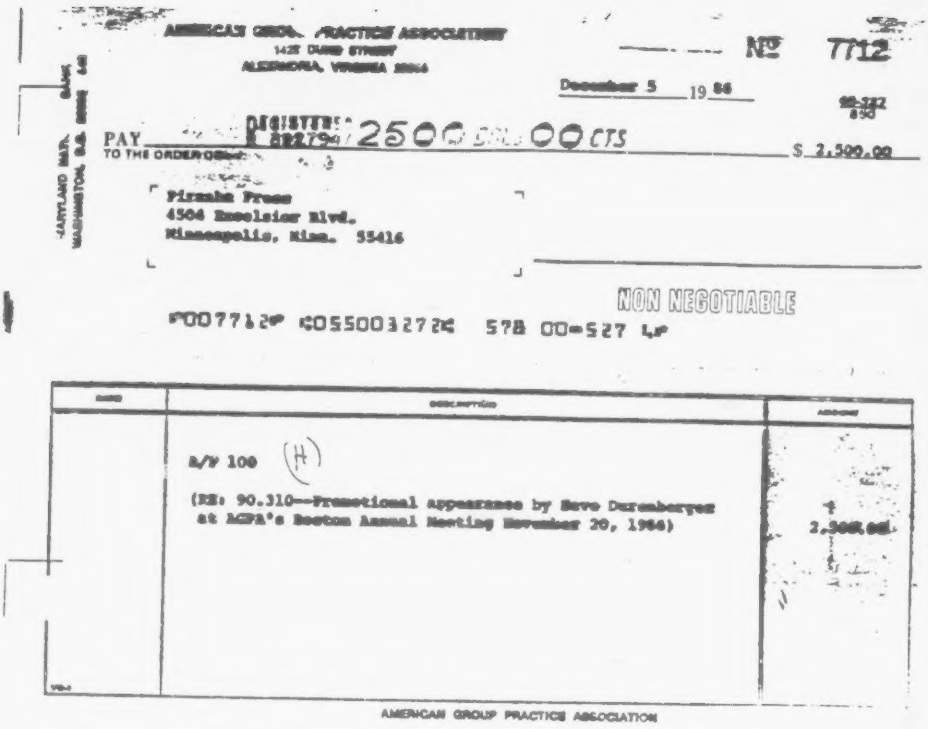


AMERICAN GROUP PRACTICE ASSOCIATION
1422 DUKE STREET
ALEXANDRIA, VIRGINIA 22314

Nº 7712

December 5 19 84

MARYLAND NAT. BANK
WASHINGTON, D.C.

PAY REGISTERED 2500 DOLS 00 CTS $ 2,500.00

TO THE ORDER OF

Piranha Press
4504 Excelsior Blvd.
Minneapolis, Minn. 55416

NON NEGOTIABLE

⑈007712⑈ ⑆055003272⑆ 578 00=527 4⑈

DATE	DESCRIPTION	AMOUNT
	A/P 100 (H) (RE: 90.310--Promotional Appearance by Dave Durenberger at AGPA's Boston Annual Meeting November 20, 1984)	2,500.00

AMERICAN GROUP PRACTICE ASSOCIATION

PIRANHA
PRESS
Gary L. Diamond
Publisher

JRE
fyi
Bert

file

May 8, 1985

Mr. Bert Pena
1155 15th Street NW
Suite 502
Washington, DC 20005

RE: PROMOTIONAL APPEARANCE BY DAVE DURENBERGER

Dear Mr. Pena:

We have been advised by Senator Dave Durenberger's office that you have inquired regarding a promotional appearance by Senator Durenberger before Bristol Meyers on May 13, 1985.

As you were no doubt informed by Senator Durenberger's staff, we are the publisher and promoter of Senator Durenberger's book(s), and he has granted us the exclusive right to represent him in connection with all public appearances affecting the promotion of his book(s). It is in this capacity that we are contacting you and propose to enter into an arrangement for his appearance before your organization.

On behalf of Senator Durenberger we hereby consent to his appearance before your organization at the time and place specified in the attached schedule in consideration of the payment by you to us of the sum set forth in such schedule.

Your organization shall be responsible for making all travel arrangements and accommodations for Senator Durenberger. These arrangements must be confirmed through his office in advance. All payments must be made in advance and tickets delivered to his office no later than three days before the scheduled departure. All such arrangements must be satisfactory to Senator Durenberger and his staff.

Payment of the sums due us must be made to us within ten days from the date of this letter.

RECEIVED
MAY 17 1985
ACCTS PAYABLE

4504 EXCELSIOR BLVD. · MINNEAPOLIS, MINN. 55416 PHONE (612) 920-7711

Because Senator Durenberger's appearance before your organization will be in promotion of his book(s), we expect that you will make available to us adequate space at or near the entrance to the function at which Senator Durenberger will be speaking for the prominent display and sale of his book(s). We will provide all necessary promotional literature.

Due to Senator Durenberger's commitments before the United States Senate, we cannot guarantee his appearance and we may not be able to give you any advance notice of his changes in plans so as to allow you to schedule another speaker. However, in the event Senator Durenberger is unable to appear due to circumstances within his control, we shall upon your request, refund 100% of all sums advance by you to us.

If you have any questions, please contact myself or Anne Kelly at Senator Durenberger's office (202/224-9477).

Very truly yours,

GARY DIAMOND, President

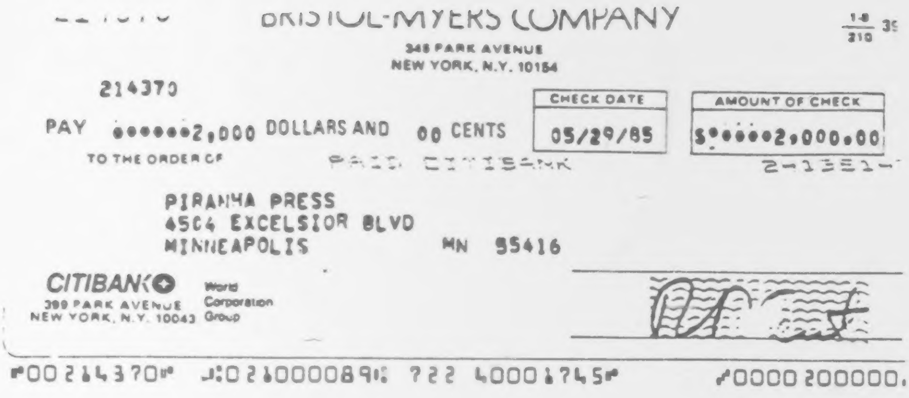
cc: Ms. Anne Kelly
Ms. Kitty Gamble

RECEIVED
MAY 17 1985
ACCT'S PAYABLE

APPEARANCE SCHEDULE

Date	Time of Appearance	Place	Amount
May 13, 1985	Breakfast	Washington, DC	$2,000

RECEIVED
MAY 17 1985
ACCTS PAYABLE



BRISTOL-MYERS COMPANY
348 PARK AVENUE
NEW YORK, N.Y. 10154

1-8 / 210

214370

PAY ******2,000 DOLLARS AND 00 CENTS

CHECK DATE: 05/29/85

AMOUNT OF CHECK: $*****2,000.00

TO THE ORDER OF

PAID CITIBANK

PIRANHA PRESS
4504 EXCELSIOR BLVD
MINNEAPOLIS MN 55416

CITIBANK
399 PARK AVENUE
NEW YORK, N.Y. 10043
World Corporation Group

00214370 021000089 722 40001745 0000200000

PAY TO THE ORDER OF
NORWEST BANK MIDLAND, N.A.
ST LOUIS PARK, MN
FOR DEPOSIT ONLY
PIRANHA PRESS, INC.
320 44 348

CHECK REQUEST

BRISTOL-MYERS COMPA
STAFF

CHECK TO BE MADE PAYABLE TO	Piranha Press
STREET ADDRESS	4504 Excelsior Blvd.
CITY	Minneapolis
STATE ZIP CODE	Minnesota 55416

16-17

ACCOUNT(S) TO BE CHARGED	AMOUNT
950-42-00990	$2,000
NET AMOUNT OF CHECK	$ 2,000

FOR ACCOUNTING USE ONLY

COMPANY	BATCH	VOUCHER
900	P28	I40315

DL

AUDITED BY JB

CARD	ACT	VENDOR NUMBER	VENDOR NAME	SEP. CK.	TYPE	HANDLE
V1	/	138262	PIRAN PRESS	3		W

CARD	ACT	INVOICE NUMBER	DATE MO.	DATE DAY	DATE YR.
V2	/	CRI40315	05	15	85

DUE DATE MO.	DUE DATE DAY	DUE DATE YR.	PAY
			I

MANUAL CHECK NUMBER	DATE MO.	DATE DAY	DATE YR.

CARD	ACT	LINE	PURCHASE ORDER	REPEAT ON EVERY V3 CARD
V3	/			

AMOUNT OF CHECK (WRITE OUT) Two thousand dollars and 00/100

REASON FOR DISBURSEMENT Compensation for a promotional appearance by Senator David Durenberger before the Policy Committee

Under normal conditions a check will be mailed directly to the payee five days after this document is received by Accounts Payable. If you require an earlier payment date, or if you have attached the Special Instructions Card, please indicate. →

EXCEPTION HANDLING

DATE PAYMENT REQUIRED

☒ SPECIAL INSTRUCTION CARD ATTACHED

APPROVED BY	DATE	APPROVAL SIGNATURE
J. Richard Edmondson	5/15/85	J. Richard Edmondson

PLEASE RUSH

RECEIVED
MAY 17 1985
ACCT'S PAYABLE

COUNCIL FOR RESPONSIBLE NUTRITION
2100 M Street, N.W., Suite 602
Washington, D.C. 20037
(202) 872-1488

September 12, 1986

Mr. Gary L. Diamond, Publisher
Piranha Press
4504 Excelsior Boulevard
Minneapolis, Minnesota 55416

Dear Mr. Diamond:

In accordance with the agreement for Senator David Durenberger to speak before the Council for Responsible Nutrition, I am enclosing a check in the amount of $2,000.

Senator Durenberger was a smashing success and his remarks were right to the point. Would that all of our outside speakers could relate their particular areas of expertise and interest to our mutual concerns.

I would appreciate it if you would send me information on the per copy price and a bulk rate for Senator Durenberger's book.

Sincerely,

JB

J. B. Cordaro
President

JBC:sss

Enclosure

MSL
MANNING, SELVAGE & LEE/ATLANTA
Public Relations
PEACHTREE CENTER-CAIN TOWER
229 PEACHTREE ST., N.E., SUITE 1600, ATLANTA, GEORGIA 30303
(404) 659-1444

A Division of
Manning, Selvage & Lee, Inc.

MEMORANDUM

TO: s. Jodi Mathison

FROM: Sandy Mayson Sandy Mayson

DATE: September 18, 1986

RE: HealthAmerica's Health and Business Luncheon

You were away from your desk when I called this afternoon, so I am writing to offer some alternate dates for the HealthAmerica luncheon. Two of HealthAmerica's vice presidents will not be able to attend the luncheon on November 7, so here are other dates for Senator Durenberger to consider.

Thursday, November 13

Friday, November 14

Thursday, November 19

Friday, November 20

Friday, December 5

Also, there is a slight chance that HealthAmerica will be able to give its luncheon guests copies of the Senator's book, "Prescription for Change." If so, would it be possible to buy the books for $5 or less, and would Senator Durenberger be willing to autograph them at the conference?

Please call me Friday, September 19, to confirm Senator Durenberger for the luncheon and the best date for his visit. Thank you.

Chicago • Dallas • Los Angeles • New York • San Jose • Washington, D.C.
Brussels • Canberra • Frankfurt • The Hague • Hamburg • London
Melbourne • Milan • Osaka • Paris • Sydney • Tokyo • Toronto • Toulouse

D

MS&L

MANNING, SELVAGE & LEE/ATLANTA
Public Relations

PEACHTREE CENTER-CAIN TOWER
229 PEACHTREE ST., N.E., SUITE 1600, ATLANTA, GEORGIA 30303
(404) 659-1444

A Division of
Manning, Selvage & Lee, Inc.

MEMORANDUM

TO: Jodi Mathison

FROM: Sandy Mayson Sandy

DATE: September 22, 1986

SUBJECT: HealthAmerica's November 14 Luncheon

Everyone at HealthAmerica is extremely pleased that Senator Durenberger has agreed to speak at HealthAmerica's Health and Business Luncheon on Friday, November 14, 1986. As we discussed, the luncheon will begin around 12 Noon and probably will conclude around 2:30 p.m.

I plan to write a synopsis of Senator Durenberger's background, Senate affiliations, etc. for an enclosure in the luncheon invitation. It should be simple and factual, but I will be happy to send you a copy for approval.

As you requested, I will contact Helen Darling about Senator Durenberger's speech, and speak to Mike Mahoney about buying a supply of the book, "Prescription for Change," to be given to the luncheon guests.

I will talk with you soon about the luncheon specifics. Call me if you have any questions. Thanks for everything!

Chicago • Dallas • Los Angeles • New York • San Jose • Washington, D.C.
Brussels • Canberra • Frankfurt • The Hague • Hamburg • London
Melbourne • Milan • Osaka • Paris • Sydney • Tokyo • Toronto • Toulouse

E

[redacted]

MASSACHUSETTS MUTUAL LIFE INSURANCE COMPANY, SPRINGFIELD, MASSACHUSETTS 01111

TO: Byron B. Mattson
Second Vice President

FROM: Jan A. Berger ab
Public Affairs Administrator

M/P: E168

M/P: E306 EXT.: 2727

RE: Request for return of check(s)

DATE: 5/17/85

This is to request return of the following check(s) to me for special handling*.

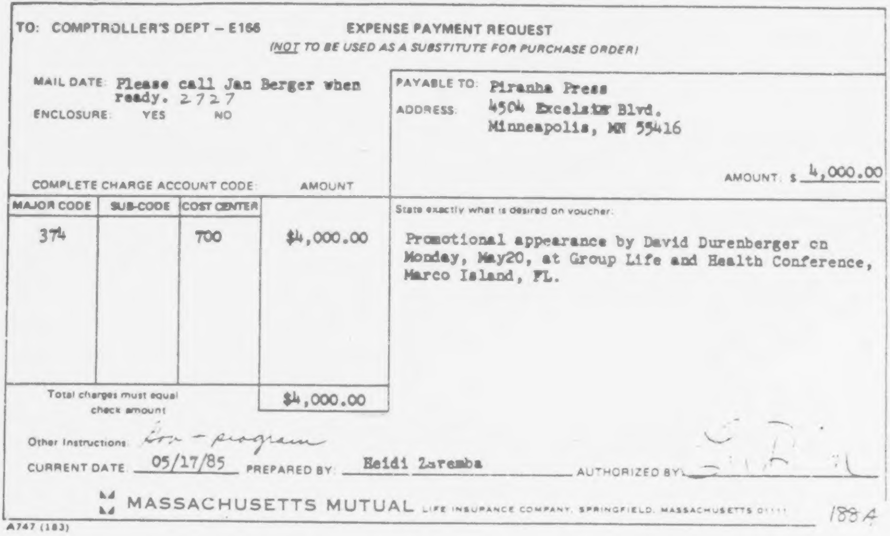
Check to:	Amount
Perianta Press	$ 4,000.00

Please call me at extension 2727 for pickup.

*Special handling:

✓ Hand delivery
____ Overnight delivery via Federal express
____ Other

U



TO: COMPTROLLER'S DEPT – E166

EXPENSE PAYMENT REQUEST

(NOT TO BE USED AS A SUBSTITUTE FOR PURCHASE ORDER)

MAIL DATE: Please call Jan Berger when ready. 2727

ENCLOSURE: YES NO

PAYABLE TO: Piranha Press

ADDRESS: 4504 Excelsior Blvd.
Minneapolis, MN 55416

AMOUNT: $ 4,000.00

COMPLETE CHARGE ACCOUNT CODE:

MAJOR CODE	SUB-CODE	COST CENTER	AMOUNT
374		700	$4,000.00
Total charges must equal check amount			$4,000.00

State exactly what is desired on voucher:

Promotional appearance by David Durenberger on Monday, May20, at Group Life and Health Conference, Marco Island, FL.

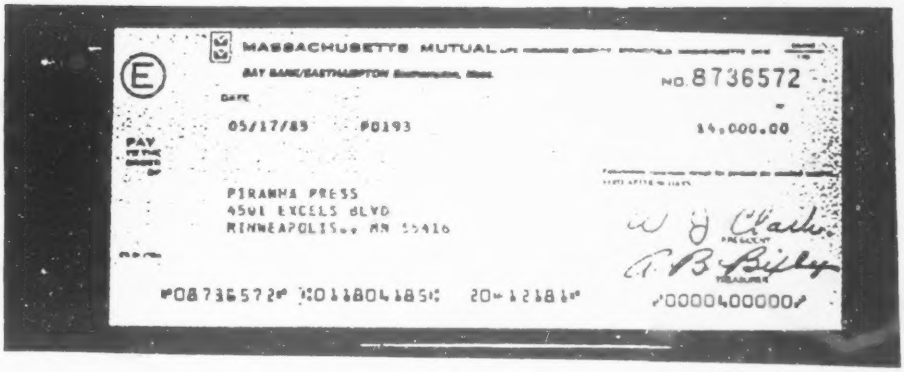
Other Instructions: for – program

CURRENT DATE: 05/17/85 PREPARED BY: Heidi Zaremba AUTHORIZED BY:

MASSACHUSETTS MUTUAL LIFE INSURANCE COMPANY, SPRINGFIELD, MASSACHUSETTS 01111

188A

A747 (183)



MASSACHUSETTS MUTUAL

NO. 8736572

DATE

05/17/85 P0193

$4,000.00

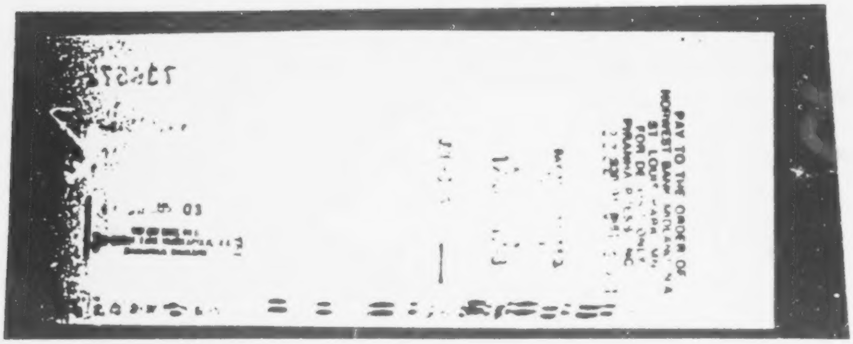
PAY

PIRANHA PRESS
4501 EXCELS BLVD
MINNEAPOLIS., MN 55416

W J Clark
PRESIDENT

TREASURER

⑈08736572⑈ ⑆011804185⑆ 20⑉12181⑈ ⑈0000400000⑈



PAY TO THE ORDER OF
NORWEST BANK MIDLAND N A
ST LOUIS PARK MN
FOR DEPOSIT ONLY
PIRANHA PRESS INC
[illegible]

Government Program – 1985 – budgeted 25,000

374/700	Dan Rostenkowski article for MM News, $1500 (cc757) sent to Misericordia Home. 1/31 ✓	500
374/700	Honorarium for Cong Richard T. Schulze ✓ 4/19	2,000
267/150	Book to be sent to Florida conference – 4/22 ✓ after autographing by Sen Durenberger (Piranha Press)	450
210	Outside Charter for Gottlieb, Dorgan + Matthews on 3/28. Richmond (visit on FIC) ✓	47222
374/700	Reimb to Jas R Martin for purchase of ✓ tickets to August National's Masters Tournament for Cong + Mrs Jenkins and Cong. + Mrs. Flippo	360 —
210	MM share of expenses for testimonial for ✓ Paul Kirk 3/6 (Sullivan + Worcester)	2606 —
374	Henson Moore Reception (chk to Jay Stone – ✓ MM share 3/85	104893
374/700	Honorable Byron L Dorgan – RE Confer. at Marco Isl., Fl on 3/29 ✓	2000.00
374/700	Honorable Guy Vander Jagt – AALU – MM ✓ sponsored dinner 3/5/85 in DC.	2,000.00
374/700	Cong. Harold E. Ford for speaking engagement ✓ for small Mass Mutual Group in Washington check drawn 5/16.	2,000
374/700	Piranha Press (Promotional appearance by David ✓ Durenberger on Mon, May 20 at Grp Life + Health Conference, Marco Isl, Fl.	4,000
[illegible]	Cong. Edgar L Jenkins for speaking engagement ✓ for Mass Mutual's Jan. 29, 1985 - Board of Directors Dinner Meeting.	2,000.

19

1985 HONORARIA

DATE	DESCRIPTION	LC/CC	OTHER	HONORARIA
1/29/85	Honorarium for speaking engagement for MM's 1/29/85 Board of Directors' Dinner Meeting. Check written to Cong. Edgar L. Jenkins.	/706 (Martin's cost ctr.)		$2,000
1/31/85	Dan Rostenkowski article for The Word; $1500 (CC757) sent to Misercordia Home, $500 to Cong. Rostenkowski	374/700	$1500 CC757	$ 500 CC700
3/5/85	Honorarium for speaking engagement at the AALU-MM sponsored dinner in D.C. Check written to the Honorable Guy VanderJagt	374/700		$2,000
3/20/85	Honorarium for speaking engagement at MM R.E. conference at Marco Island, Florida on 3/29/85. Check written to the Honorable Byron L.Dorgan	374/700		$2,000
4/19/85	Honorarium for speaking engagement before an Mini group on 4/30. Check written to Cong. Richard T. Schulze	374/700		$2,000
5/16/85	Honorarium for speaking engagement before a small MM group in Washington. Check written to Cong. Harold Ford	374/700		$2,000
5/17/85	Promotional appearance by David Durenberger on Monday, 5/20/85 at Group Life & Health Conference, Marco Island, Florida. Check to Piranha Press.	374/700		$4,000*
5/28/85	Congressman Archer - Check written to Fellowship Fund Inc.	374/757		$2,000
6/4/85	Honorarium for luncheon speaking engagement in Washington, on Tuesday, 6/4/85. Check written to The Honorable Ronnie Flippo.	374/700		$2,000
			[illegible]	18,[illegible]

N

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* Per legal advisors, this payment was not viewed as an honorarium.

1985 HONORARIA (Continued)

DATE	DESCRIPTION	LC/CC	OTHER	HONORARIA
6/10/85	Cong. Rostenkowski - Checks written to Christopher House $1,000, Holy Trinity High School $1,000, The Academy $1,000, American Inst. for Polish Arts & Culture $1,000, & Women's Board-St. Joseph Hospital $1,000.			$5,000
8/20/85	Senator Dole - Checks written to National Hispanic Scholarship Fund $3,000 and Goodwill Industries of Greater Wichita $2,000.			$5,000
8/26/85	Honorarium for speaking engagement at MM Leaders of Leaders Club Agents Conference at the Marriott Hotel in Springfield on 9/6/85. (ck. to Honorable Thad Cochran).	374/700		$2,000
9/9/85	Cong. Pete Stark. Check written to: The Pete Stark Foundation.	363/757		$2,000
12/10/85	Honorarium for speaking engagement at Miami Agency on 12/16/85. Check written to Honorable Joseph D. Early.	374/700		$2,000
			Total	34,500

AA

e: Piranha Press Amount: $ 5,500 –

ess:

Speaker's fee for Duesenberger to be paid to Piranha Press (Book promotion) for the Annual Meeting. See attached note.

#

10 08 85

PIRANHA

ACCOUNT 01-1001-220

10

VOUCHER 5,500. –

ACCOUNT	AMOUNT
63765	5,500. –

TAJ

10/9/85

Date: 10/8/85

Requested by: H Ruth / TAJ

Approved by:

Date:

Price OK

5,500. –

Ext. Chk

10/9/85

Check No.

TOTAL 5,500. – 8649

entered 10/9/85

Memo from: Heather L. Ruth

To: [illegible].

Date:

I need a check for
Piranha Press

$500

to take to Jon Tumler tomorrow

for Durenberger
~~Black tie~~.

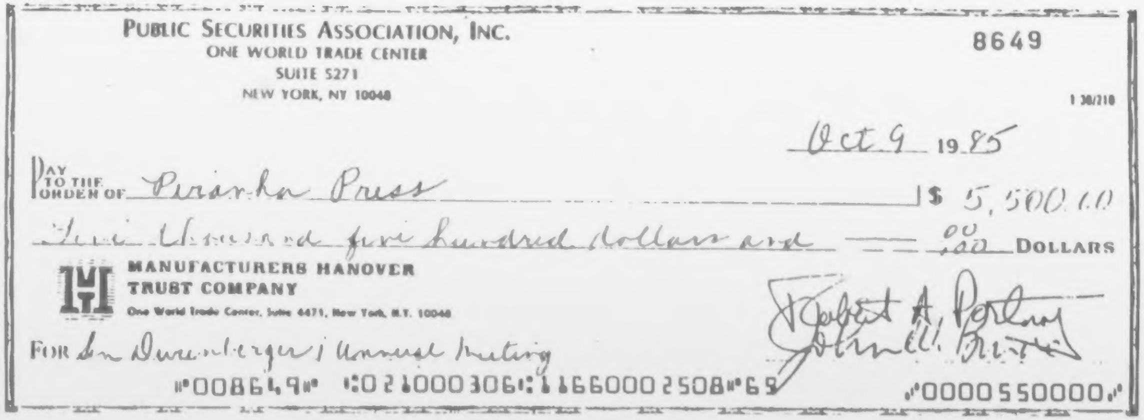
Heather.

speaker's fee

WED A.M.

Public Securities Association
One World Trade Center
New York, New York [illegible]
Telephone [illegible]

PSA



PUBLIC SECURITIES ASSOCIATION, INC.
ONE WORLD TRADE CENTER
SUITE 5271
NEW YORK, NY 10048

8649

1-30/210

Oct 9 19 85

PAY TO THE ORDER OF Piranha Press $ 5,500.00

Five thousand five hundred dollars and 00/100 DOLLARS

MANUFACTURERS HANOVER TRUST COMPANY
One World Trade Center, Suite 4471, New York, N.Y. 10048

FOR Sen Durenberger's Annual Meeting

Robert A. Portnoy

⑈008649⑈ ⑆021000306⑆11660002508⑈65 ⑈0000550000⑈

PAY TO THE ORDER OF
NORWEST BANK MIDLAND, N.A.
ST. LOUIS PARK, MN
FOR DEPOSIT ONLY
PIRANHA PRESS, INC.
320 04 348

OT 8 23
PAID
1·30

NO 85 04 H
PAY ANY BANK - P.E.G.
MANUFACTURERS HANOVER TRUST COMPANY

True Blue
DURENBERGER Crew

MEMORANDUM

DATE: January 11, 1983

TO: Dave Durenberger

FROM: Gene Holderness

SUBJECT: Condominium, LaSalle Street

ACTION NEEDED:

Your options and actions for the LaSalle Street condo are multiple as I see it. Summarized herein are some salient points for you to consider and some recommendations for you to think about.

1. The condo is a very convenient and comfortable place for you when you are in town. It allows you and Penny to leave personal items here and not carry back and forth. It also is a place to "hide" and work. For the past four years it has been a good investment because of a combination of high usage and value appreciation.

2. The factors which made it good for 1978-82 should be seriously evaluated to see if they are valid today and for the forseeable future. Also, alternative investment options should be considered.

3. The usage factor will probably be reduced quite abit. You won't be as close to re-election so your total days in Minnesota will be fewer. You won't be flying privately as much as you did in the last 18 months so returning home to Minneapolis won't be as frequently chosen an alternative as before. George proposed a Minnesota schedule yielding 50 days/year in Minnesota for 1983. 1984 could be a little higher if you help others campaign. If 40% of your time is non Twin Cities, then you are here only 30 nights in 1983 and maybe 40-45 in 1984.

4. Value appreciation has, according to Roger Scherer - and I agree- been maximized (not ended). In 4 years its gone from 40 plus to 70 plus or about 75%, 18% per year. The next 4 years won't match that - not last year either. Appreciation may be around 5-8% per year in the coming 3-4 years.

5. You have monthly payments of about $550 now. Condo fees will go up as will utilities and property taxes. You also have an equity investment of about $30,000 plus which could be used for other investment yielding 18-25%. So you have an opportunity cost of about $5,500 per year on your capital plus a holding cost of about $7,000 (tax deductible) per year for the condo. In total it costs you about $10,000 per year, some of it deductible.

SPECIAL
COUNSEL
HEARING
EX. 297

Paid for and authorized by Durenberger for U.S. Senate, Dennis Pedersen, Treasurer.

6. Government expense policy allows you $75 per diem for room and board. Food is about $25 so you have $50 left for room. Even 100 days would only give you $5,000 in recovery. More likely it will be 30-40 nights for $1500 to $2000.

7. Both Randy Johnson and I feel that the swap with Roger is legal but not good politics for you. It looks funny. Besides, it still costs you money. Randy feels it would be difficult to explain even though it is not against any law. I agree.

8. You could probably arrange for an executive suite room at the Hyatt for $50 anytime you or Penny - or the Barans for that matter - needed it. This would be fully recoverable to you. The location is great and Abduhl would roll out the carpet for you.

9. You could arrange for a private "closet" at the Minneapolis Senate Office to keep personal items you wished to store and not carry back and forth.

10. The campaign can rent a hideaway office for you in Jack Farrell's building or in the Plymouth Building so you could sneak out and hide and make calls or study or rest. This could also be our office. You could also use the Hyatt as a hideaway.

Dave, the condo is now clearly a luxury you can choose to keep but please do so knowing its full cost to you. It really is your personal decision between cost and convenience and comfort. It is no longer a very good investment, per se.

It I were you I would seriously consider selling it, staying at the Hyatt and hiding elsewhere, either the Hyatt or a remote campaign office and taking the money and investing it elsewhere. You could pay down your line with Vic (now 14%) or you could invest in stocks, bonds or other real estate.

There is plenty to think about and no real rush. There is no reason to delay either. I would suggest you see what Penny's thoughts are too. Perhaps we can discuss it more thoroughtly when Susie and I come out for the prayer breakfast.

ESH/do

Gene

RANDALL E. JOHNSON
Attorney-at-Law
3700 W. 104th STREET
BLOOMINGTON, MINNESOTA 55431
(612) 625-2651

ADMITTED IN
MINNESOTA AND
DISTRICT OF COLUMBIA

June 26, 1983

The Honorable Dave Durenberger
353 Russell Senate Office Building
Washington, D.C. 20510

Dear Senator:

Gene Holderness and Roger Sherer have talked to me about the proposed transactions involving the condominium. I told them that I am ready to proceed with the papers as soon as you give the word. In order to minimize any possible concern about receiving reimbursement out of Senate funds for nights spent at the condominium, I believe it is important for you to list your new unit immediately and sell it within a reasonable period of time. You will have to change your legal and voting residence to somewhere outside the Twin Cities area. I think Gene suggested that you will probably use your parents' address, which is perfectly acceptable under Minnesota law. ✓

Continued...

Please call me if you have any questions.

Very truly yours,

Randall E. Johnson
Attorney-at-Law

REJ/lw*A030
Enclosures

PARTNERSHIP AGREEMENT

OF

DURENBERGER - SCHERER PARTNERSHIP

a Minnesota Partnership

This Partnership Agreement made effective the 28th of July, 1983, and made between David F. Durenberger ("Durenberger") and Roger H. Scherer ("Scherer").

WHEREAS, Durenberger owns a condominium described as Apartment #603, 1225 LaSalle Avenue, Minneapolis, Minnesota; and

WHEREAS, Scherer owns a condominium described as Apartment #703, 1225 LaSalle Avenue, Minneapolis, Minnesota; and

WHEREAS, the parties entered into an oral agreement on or about the 28th day of July, 1983, regarding the leasing of 603 and 703; and

WHEREAS, pursuant to said oral agreement, a partnership was formed and began business on July 28, 1983; and

WHEREAS, said oral partnership agreement was not definitive of all rights and obligations of the parties; and

WHEREAS, the parties agreed that the then existing oral partnership agreement be amended to provide further definition of the rights and obligations of the parties and be reduced to writing;

NOW THEREFORE, THIS AGREEMENT WITNESSETH THAT IN CONSIDERATION of the covenants and agreements contained in this Agreement the parties agree as follows:

SPECIAL
COUNSEL
HEARING
EX. 316

ARTICLE I

INTERPRETATION

1.1 Definitions In this Agreement, unless the context otherwise requires:

(a) "Capital" means the aggregate capital contributed by the Partners to the Partnership.

(b) "Code" means the Internal Revenue Code of 1954, as amended and as may be amended from time to time;

(c) "Fiscal Period" means the fiscal period of the Partnership as provided for in section 2.4;

(d) "Property" means the condominium apartments 603 and 703 located at 1225 LaSalle Avenue, Minneapolis, Minnesota;

(e) "603" means that part of the Property constituting Apartment 603;

(f) "703" means that part of the Property constituting Apartment 703;

(g) "Partnership" means this Partnership organized under the laws of the State of Minnesota;

(h) "Sale" means the sale of the Property or any part thereof or interest therein, the receipt of compensation for the expropriation or condemnation of or injury to the Property or any part thereof or interest therein or the recovery or damage awards or insurance proceeds (other than business or interruption insurance proceeds) in respect thereof;

(i) "Taxable Income or Loss" in respect of any Fiscal Period means the amount of income or loss of the Partnership for such period as reported for Federal income tax purposes, excluding the amount of any gain or loss from the disposition of the Property;

(j) "Cash Flow" means the Taxable Income before allowances for depreciation or amortization and other non-cash expenses less payments of principal on outstanding indebtedness and for capital improvements.

1.2 Interpretation For all purposes of this Agreement, except as otherwise expressly provided or unless the context otherwise requires:

(a) "this Agreement" means this Partnership Agreement as it may from time to time be supplemented or amended;

(b) the headings are for convenience only and do not form a part of this Agreement nor are they intended to interpret, define or limit the scope, extent or intent of this Agreement or any provisions hereof;

(c) all accounting terms not otherwise defined herein have the meanings assigned to them by, and all computations made pursuant to this Agreement, except as expressly provided otherwise, shall be made in accordance with, generally accepted accounting principles;

(d) any reference to a statute shall include and shall be deemed to be a reference to such statute and to the regulations made pursuant thereto, with all amendments made thereto and in force from time to time, and to any statute or regulation that may be passed which has the effect of supplementing or superseding the statute so referred to or the regulations made pursuant thereto:

ARTICLE II

RELATIONSHIP BETWEEN PARTNERS

2.1 Formation of Partnership. Durenberger and Scherer have heretofore formed a Partnership as a Minnesota partnership which Partnership shall hereafter continue pursuant to this Agreement. The Partnership shall carry on business under the name "Durenberger - Scherer Partnership" or such other name or names as the Partnership may determine from time to time.

2.2 Business of the Partnership. The Partnership shall carry on the business of leasing 603 and 703.

2.3 Principal Place of Business. The principal place of business of the Partnership shall be at 1225 LaSalle Avenue, Minneapolis, Minnesota, or such other place or places as may be determined by the Partners.

2.4 Fiscal Period. The fiscal period of the Partnership shall end on December 31 of each calendar year.

2.5 Limitation on Authority of Partners. No Partner shall, without the consent of the other Partner:

(a) execute any document which binds or purports to bind the Partnership or any Partner;

(b) hold himself out as having the power or authority to bind the Partnership or any Partner as such;

(c) undertake any obligation or responsibility on behalf of the Partnership;

(d) bring any action for partition or sale in connection with the Property or other assets of the Partnership, whether real or personal, or register or permit any lien or charge in respect of the Property; or

(e) compel a partition, judicial or otherwise, of any of the assets of the Partnership distributed to the Partners in kind.

2.6 Unlimited Liability of Partners. The Partners shall be jointly and severally liable for the debts, liabilities and obligations of the Partnership to the extent required by law. However, no Partner shall be liable, responsible or accountable in damages or otherwise to the Partnership or to the other Partner for any act performed in good faith within the scope of this Agreement in connection with the affairs of the Partnership, except with respect to any fraud, intentional misconduct, gross negligence or breach of any fiduciary duty or covenant contained in this Agreement.

ARTICLE III

CAPITAL CONTRIBUTIONS AND ACCOUNTS

3.1 Capital Contribution by Partners. The capital of the

Partnership is as follows as of the date of this Agreement:

(a) 603, as described in Schedule A attached to this Agreement, contributed by Durenberger.

(b) 703, as described in Schedule B attached to this Agreement, contributed by Scherer.

The present fair market value and the adjusted tax basis of 603 and 703, as of the date of this Agreement, are set forth in Schedule B.

3.2 Additional Contributions to Capital by Partners. No Partner shall be required to make any additional contributions to the capital of the Partnership except as follows:

(a) Any Partner who has a negative balance in his capital account, after application of Article V, shall be required to contribute to the Partnership an amount of cash sufficient to raise such balance to zero.

(b) The Partners shall contribute equal amounts to the Partnership to fund any deficit cash flow resulting from the operations of the Partnership.

3.3 Capital Accounts. A separate capital account shall be maintained by the Partnership for each Partner in accordance with sound tax accounting principles as required by the Code. The capital account of each Partner shall consist of that Partner's contribution of cash plus the basis of any property contributed to the Partnership as determined pursuant to the Code. The capital account of each Partner shall thereafter be increased by:

(a) the amount of any additional cash contributed to the capital of the Partnership; and

(b) the tax basis, as determined pursuant to the Code, of any property contributed to the capital of the

Partnership; and

(c) such partner's share of the Taxable Income of the Partnership for each Fiscal Period including any item of income specially allocated; and

(d) such Partner's share of any gain upon the sale or disposition of any assets of the Partnership including any item of the gain specially allocated; and

(e) such Partner's share of gain or income not recognized or not subject to tax under the Code for each Fiscal Period;

and decreased by:

(f) the fair market value of distributions of property or cash to such Partner; and

(g) such Partner's share of the Taxable Loss of the Partnership for each Fiscal Period including any item of expense or deduction specially allocated; and

(h) such Partner's share of any loss upon the sale or disposition of any assets of the Partnership including any item of loss specially allocated; and

(i) such Partner's share of any expenses borne by the Partnership which are not deductible in determining Taxable Income under the Code.

Unrecognized gain or loss associated with distributed property shall be credited or charged to the capital accounts of the Partners as gain or loss would be credited or charged if such distributed property had been sold by the Partnership at the time of distribution for its then fair market value; provided that if such distributions take place pursuant to the dissolution of the Partnership, any adjustments to capital account balances resulting from such hypothetical sales shall be made subsequent to any adjustments to capital account balances resulting from actual sales, exchanges, or other disposition of property made pursuant to dissolution.

3.4 Creditor's Interest in Partnership. No creditor who makes a nonrecourse loan to the Partnership shall have or acquire, at any time as a result of making the loan, any direct or indirect interest in the profits, capital or property of the Partnership other than as a secured creditor, notwithstanding any other provisions of this Agreement.

ARTICLE IV

TERM

4.1 Term of Partnership. The Partnership shall terminate on Thirty (30) days written notice by either Partner to the other, unless otherwise terminated pursuant to this Agreement.

ARTICLE V

DISTRIBUTIONS AND ALLOCATIONS

5.1 Cash Flow Distributions. The Partnership shall distribute to the Partners the cash flow of the Partnership within a reasonable time after the end of each quarter period during the Fiscal Period, except, however, the Partnership may retain such amounts as it deems reasonable in order to provide for any reasonably anticipated expenditures or liabilities of the Partnership, including, without limitation, reserves for replacement and capital improvements and debt service for which adequate provision has not been made. The Partners shall share equally in all such distributions

5.2 Distributions of Net Proceeds. Any net proceeds from insurance, condemnation or sale of any of the assets of the

Partnership shall be distributed to the Partners in the same manner as Cash Flow Distributions.

5.3 Distributions from Refinancing Proceeds. Any net proceeds from refinancing shall be distributed to the Partners in the same manner as Cash Flow Distributions.

5.4 Distributions from Liquidation. Distributions in liquidation of the Partnership shall be made in accordance with Article VI.

5.5 Allocation of Taxable Income or Loss. Taxable income or loss shall be allocated to each Partner as follows:

(a) Taxable Income or Loss shall be allocated equally between the Partners (on the basis that each Partner owns an undivided one-half interest in all Partnership Property).

(b) Should any provision of the Code cause the amount of Taxable Income or Loss to increase or decrease with respect to a Partner, then said increase or decrease shall be allocated to said Partner so as not to affect the amount of Taxable Income or Loss allocable to the other Partner pursuant to paragraph 5.5(a).

(c) Should the allocation of any item of loss or deduction exceed the tax basis, as determined under the Code, of any Partner's interest in the Partnership, the amount of such item of loss or deduction which is in excess of such tax basis shall not be allocated to such Partner but shall be allocated to the other Partner.

(d) Should the allocation of any item of loss or deduction attributable to nonrecourse debts secured by the Property cause the sum of the negative capital account balances of the Partner or Partners receiving such allocation to exceed an amount equal to the "minimum gain" (as that term is defined in Proposed Treasury Regulation 1.704-1(b)(4)(iv) or its successor regulation) that would be realized upon foreclosure of the Property, no items of loss or deduction attributable to such nonrecourse debts shall be allocated to any Partner whose capital account is negative if the effect of such allocation would be to cause such negative capital account to exceed the amount of gain recognized upon such foreclosure. Any such item of loss or deduction not allocated to a Partner shall be allocated to the other Partner. Notwithstanding the foregoing, if at any time a Partner's negative capital account exceeds such excess, that Partner shall thereafter be allocated items of Gross Income (as defined in the Code) which allocations shall coincide, in amount and time, with any principal reduction in the amount of the nonrecourse debt, and which allocations shall not be greater than an amount necessary to cause such negative capital account to exceed the amount of gain which would be recognized upon such foreclosure.

5.6 Allocation of Gain or Loss on Property Disposition. Gains and losses from the sale, exchange or other disposition of Property, whether voluntary or involuntary, shall be allocated in the following order:

(a) Each Partner shall be allocated gain in an amount equal to the aggregate amount of depreciation allocated to each Partner by the Partnership to the extent the depreciation deduction is utilized by each Partner as an offset to his taxable income.

(b) Scherer shall be allocated gain attributable to 703 in an amount equal to the difference between:

(i) the amount by which the fair market value of 703 at the date of contribution to the Partnership exceeds the adjusted basis of 703 at the date of contribution to the Partnership; and

(ii) the amount by which the fair market value of 603 at the date of contribution to the Partnership exceeds the adjusted basis of 603 at the time of contribution to the Partnership.

(c) All other gains and losses, if any, shall be allocated to each Partner in accordance with the ratio of such Partner's capital account to the total capital accounts of the Partnership.

ARTICLE VI
DISSOLUTION OF PARTNERSHIP

6.1 The Partnership shall be dissolved on the earliest of:

(a) The expiration of the terms set forth in Section 3.1;

(b) The sale, exchange or other disposition of all or substantially all of the assets of the Partnership;

(c) The final decree of a court that dissolution or liquidation is required under applicable law; or

(d) The death, incompetence, bankruptcy, insolvency or receivership of any one of the Partners.

6.2 Distribution of Proceeds of Liquidation. Notwithstanding any other provision in this Agreement to the contrary, the Partnership shall distribute, in the following order of priority, the Partnership assets and the net proceeds from liquidation of the Partnership (including sale proceeds of the Property) as follows:

(a) To pay the expenses of liquidation and the debts and liabilities of the Partnership to its creditors or to make due provision for payment thereof (including the assumption by a purchaser of the Property of the balance secured by a mortgage charging the Property or any other indebtedness of the Partnership);

(b) To provide reserves that Partnership considers reasonably necessary for any contingent or unforeseen liability or obligation of the Partnership; provided, however, that the foregoing shall not be construed to include any repayment of any Partner's capital contributions or any capital account balance of any Partner;

(c) The remaining assets or proceeds shall be distributed to the Partners in accordance with their capital account balances. All assets shall be valued for this purpose at their fair market value at the time of distribution. Any Partner who has a negative balance in his capital account shall contribute to the Partnership immediately prior to liquidation an amount of cash sufficient to raise such balance to zero.

6.3 Distributions of Property. Each Partner shall have the right to demand and receive a distribution in a form other than cash, but nothing herein shall require a distribution in a form other than cash.

6.4 Termination of Partnership. The Partnership shall terminate when, after payment of or due provisions for the payment of all debts, liabilities and obligations of the Partnership to creditors, all of its assets or the net proceeds therefrom have been distributed as provided in this Article VI.

ARTICLE VII

BOOKS AND RECORDS

7.1 Books of Account. The Partners shall keep and maintain, or cause to be kept and maintained, at a place determined by the Partners, books of account and records of the Partnership.

7.2 Employment of Auditor. The Partners may retain an independent auditor to audit the financial statements of the Partnership, for, and as at the end of, each Fiscal Period.

7.3 Inspection of Books and Records. The Partners may inspect the books and records of the Partnership at any reasonable time for any proper purpose.

ARTICLE VIII

NOTICES

8.1 Form and Delivery. Any notice, direction or request required or permitted to be given hereunder shall be in writing and shall be given by personal service, telex, telegram or by registered letter, with postage thereon fully prepaid, to be addressed as follows: If to Durenberger, Box 232, Avon, Minnesota 56310; and if to Scherer, 7118 North Willow Lane, Minneapolis, Minnesota 55430. Any notice, direction or request delivered personally or by telex or telegram shall be deemed to have been received by and given to the addressee on the day of delivery. Any notice, direction or request mailed as aforesaid shall be deemed to have been received by and given to the addressee on the third business day following the date of mailing except in the event of a disruption of postal service in which event notice shall be delivered personally or given by telex or telegram.

ARTICLE IX

BANKING

9.1 Banking. All funds of the Partnership shall be deposited in its name in such checking account(s) and in such bank(s) as shall be designated by the Partners. All withdrawals therefrom are to be made upon checks signed by any Partner or by a party or parties designated by a Partner.

ARTICLE X

MISCELLANEOUS

10.1 Governing Law. This Agreement and the application of interpretation hereof shall be governed exclusively by its term and by the laws of the State of Minnesota and each Partner irrevocably submits to the jurisdiction of the court of the State of Minnesota.

10.2 Severability. Each provision of this Agreement is intended to be severable. If any provision hereof is illegal or invalid, such illegality or invalidity shall not affect the validity of the remainder hereof.

10.3 Counterparts. This Agreement may be executed in any number of counterparts with the same effect as if all parties hereto had signed the same document. All counterparts shall be constructed together and shall constitute one and the same agreement.

10.4 Time. Time shall be of the essence hereof.

10.5 Further Assurances. The parties hereto agree to execute and deliver such further and other documents and perform and cause to be performed such further and other acts and things as may be necessary or desirable in order to give full effect to this Agreement and every part thereof.

10.6 Binding Effect. This Agreement shall be binding upon and inure to the benefit of the parties hereto, and, to the extent permitted hereunder, their respective successors and assigns.

10.7 Entirety of Agreement. This Agreement expresses the entire understanding between the Partners, and no provision of the within Agreement may be changed, modified, altered or in any form or manner amended, unless such further agreement is committed to writing and signed by all parties as a supplemental agreement. This Agreement shall inure to the benefit of, and be binding upon, the Partners and their heirs, executors, administrators and assigns.

David F. Durenberger

Roger H. Scherer

SCHEDULE A

CAPITAL CONTRIBUTION BY DAVID F. DURENBERGER

Condominium Street Address:

Apartment #603, 1225 LaSalle Avenue, Minneapolis, Minn

Condominium Legal Description:

Apartment No. 603 and .44% of undivided interest : common areas and facilities, Apartment Ownership No The Tower of 1200 On The Mall, 1225 LaSalle A Minneapolis, Minnesota located upon the following des land:

Tract A, Registered Land Survey No. 1487,

according to the Declaration of Apartment Ownershi attached By-Laws filed as Document No. 1321937 on th day of March, 1979, and the Floor Plans filed as Dc No. 1321938 on the 21st day of March, 1979, files Registrar of Titles;

each apartment is intended for residential use subj the provisions as more fully set forth in said Decla and By-Laws;

subject to the provisions of Minnesota condominiu Minnesota Statutes 1976, Chapter 515 and acts amer thereof;

subject to restrictions, rights and easements grante common areas and facilities as contained in the Decl Document No. 1321937.

Condominium's Fair Market Value:

$63,000.00

David F. Durenberger's Adjusted Tax Basis:

$48,324.00

SCHEDULE B

CAPITAL CONTRIBUTION BY ROGER H. SCHERER

Condominium Street Address:

Apartment #703, 1225 LaSalle Avenue, Minneapolis, Minnesota

Condominium Legal Description:

Apartment No. 703 and .44% of undivided interest in the common areas and facilities, Apartment Ownership No. 128, The Tower of 1200 On The Mall, 1225 LaSalle Avenue, Minneapolis, Minnesota located upon the following described land:

Tract A, Registered Land Survey No. 1487,

according to the Declaration of Apartment Ownership and attached By-Laws filed as Document No. 1321937 on the 21st day of March, 1979, and the Floor Plans filed as Document No. 1321938 on the 21st day of March, 1979, files of the Registrar of Titles;

each apartment is intended for residential use subject to the provisions as more fully set forth in said Declaration and By-Laws;

subject to the provisions of Minnesota condominium act, Minnesota Statutes 1976, Chapter 515 and acts amendatory thereof;

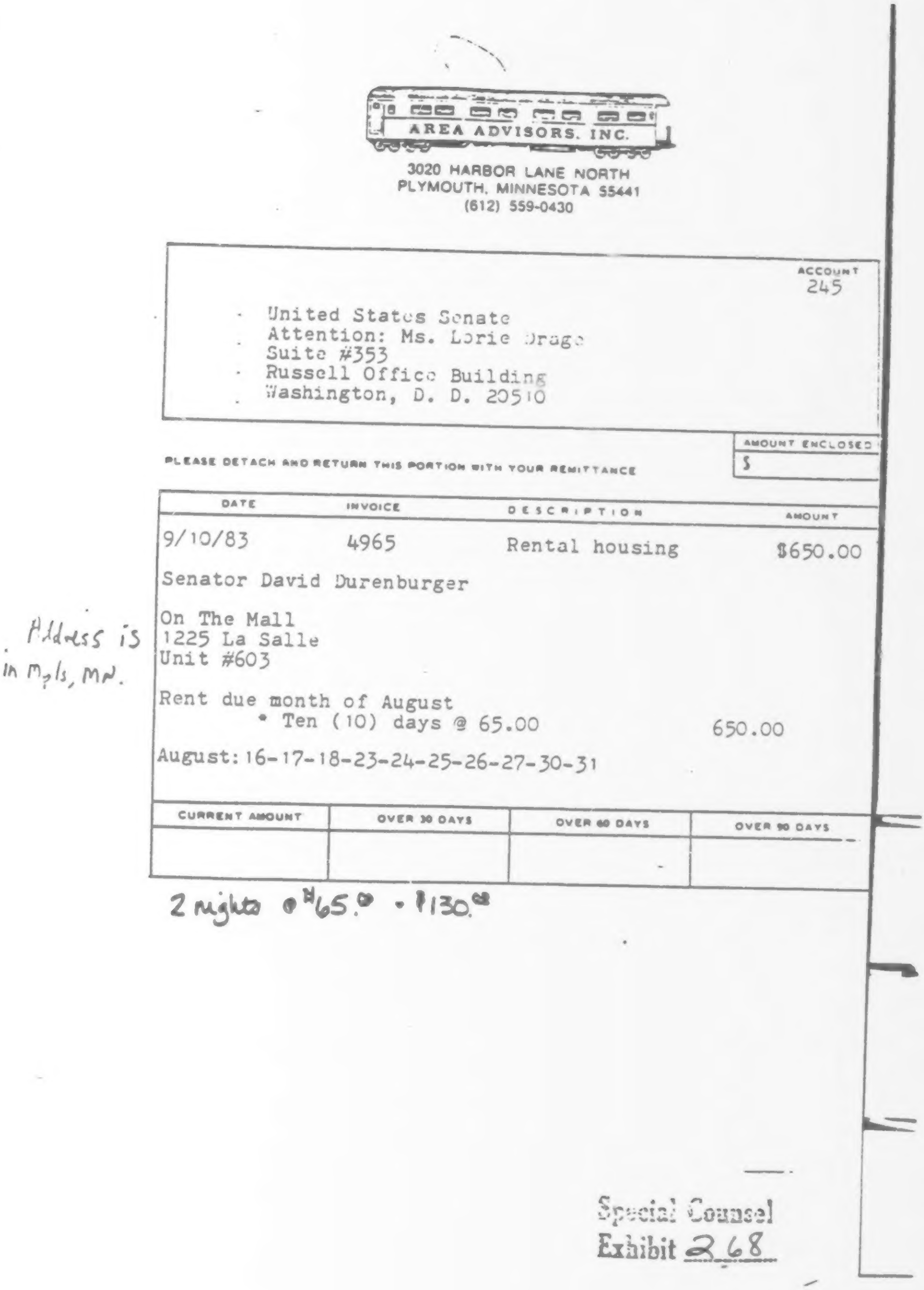
subject to restrictions, rights and easements granted over common areas and facilities as contained in the Declaration Document No. 1321937.

Condominium's Fair Market Value:

$63,000.00

Roger H. Scherer's Adjusted Tax Basis:

$42,999.00



AREA ADVISORS, INC.

3020 HARBOR LANE NORTH
PLYMOUTH, MINNESOTA 55441
(612) 559-0430

ACCOUNT
245

United States Senate
Attention: Ms. Lorie Drage
Suite #353
Russell Office Building
Washington, D. D. 20510

PLEASE DETACH AND RETURN THIS PORTION WITH YOUR REMITTANCE

AMOUNT ENCLOSED
$

DATE	INVOICE	DESCRIPTION	AMOUNT
9/10/83	4965	Rental housing	$650.00

Senator David Durenburger

On The Mall
1225 La Salle
Unit #603

Address is in Mpls, MN.

Rent due month of August
* Ten (10) days @ 65.00 650.00

August: 16-17-18-23-24-25-26-27-30-31

CURRENT AMOUNT	OVER 30 DAYS	OVER 60 DAYS	OVER 90 DAYS

2 nights @ $65.00 = $130.00

Special Counsel
Exhibit 268

DAVE DURENBERGER
MINNESOTA

United States Senate
WASHINGTON, D.C. 20510

COMMITTEE ON FINANCE
COMMITTEE ON GOVERNMENTAL AFFAIRS
SELECT COMMITTEE ON INTELLIGENCE
COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS
SELECT COMMITTEE ON ETHICS

December 28, 1983

Mr. Stuart F. Balderson
Financial Clerk
United States Senate
Hart 127
Washington, D.C. 20510

Dear Mr. Balderson:

This letter is to inform you that effective July 28, 1983 my residence in Minnesota was changed. My current legal residence is:

Senator Dave Durenberger
Box 232
Avon, Minnesota 56310

I do request that you make this change retroactive to July 28th in your records, however I also request that you do not recompute statutory mileage payments made between July 28th and the date of this notice. For purposes of statutory mileage please consider the change effective January 1, 1984.

If you have any questions, please contact Lori Krage on my personal staff.

Thank you in advance for your assistance with this matter.

Sincerely,

Dave

Dave Durenberger
United States Senator

DD/lak

376 RUSSELL SENATE OFFICE BUILDING, WASHINGTON, D.C. 20510, 202/224-3244

RANDALL E. JOHNSON
Attorney-at-Law
3700 W. 104th STREET
BLOOMINGTON, MINNESOTA 55431
(612) 835-2651

ADMITTED IN
MINNESOTA AND
DISTRICT OF COLUMBIA

December 29, 1983

The Honorable Dave Durenberger
1020 Plymouth Building
12 South Sixth Street
Minneapolis, MN 55402

PRIVILEGED & CONFIDENTIAL

Dear Dave:

This letter addresses a number of matters -- legal, political and personal.

1. Enclosed is the bill for $63.75 for my out-of-pocket expenses in connection with obtaining a duplicate Certificate of Title for your condominium. As I told Lori Krage, if you write the check before the end of this year and if you go ahead with the transaction with Roger Scherer, this is deductible for 1983 as a business expense. It is not a campaign expense.

2. It is important that you conclude the condominium transaction in order to justify the per diem reimbursement you received during the August recess. As I mentioned to you before, I believe the straight exchange with Roger bears some risk of being disallowed by the Internal Revenue Service. I am more concerned about the partnership transaction and the allocations proposed by Dick Langlais, but he is your income tax specialist. In any event, from the standpoint of Senate Rules and IRS Regulations, I believe you can claim the per diem reimbursement -- but the paperwork on this should be completed immediately if you have not done so already. Everything should be dated before August 1st, reflecting the oral agreement between you and Roger.

3.

Best wishes for a happy new year.

Very truly yours,

Randy

Randall E. Johnson
Attorney-at-Law

REJ/lw/A085

LANGLAIS, SMITH, MOONEY, GILBERT & LATTIMORE
PROFESSIONAL ASSOCIATION
ATTORNEYS AT LAW
2620 AMERICAN NATIONAL BANK BUILDING
FIFTH AND MINNESOTA STREETS
ST. PAUL, MINNESOTA 55101

RICHARD J. LANGLAIS
TERRY C. SMITH
THOMAS M. MOONEY
JOHN S. GILBERT
DON M. LATTIMORE

OF COUNSEL
LAURENCE F. KOLL
KENNETH E. McCOY

TELEPHONE 291-9155
AREA CODE 612

December 30, 1983

Senator David F. Durenberger
1020 Plymouth Building
12 South Sixth Street
Minneapolis, Minnesota 55402

Re: Durenberger-Scherer Partnership

Dear Senator Durenberger:

Enclosed herewith please find an original and one copy of the proposed Durenberger-Scherer Partnership Agreement. This Agreement is the same as the Agreement previously forwarded to you except for certain modifications made on page 1 of the Agreement. I have enclosed herewith a copy of page 1 of the previous Agreement and highlighted the areas that have been changed.

Thank you.

Very truly yours,

LANGLAIS, SMITH, MOONEY, GILBERT & LATTIMORE
Professional Association

Don M. Lattimore
Don M. Lattimore

DML:lmr

Encs.

SPECIAL
COUNSEL
HEARING
EX. 311

1983 DEC 30

PARTNERSHIP AGREEMENT
OF
DURENBERGER - SCHERER PARTNERSHIP,
a Minnesota Partnership

This Partnership Agreement made effective the 28th day of July, 1983, and made between David F. Durenberger ("Durenberger") and Roger H. Scherer ("Scherer").

WHEREAS, Durenberger owns a condominium described as Apartment #603, 1225 LaSalle Avenue, Minneapolis, Minnesota; and

WHEREAS, Scherer owns a condominium described as Apartment #703, 1225 LaSalle Avenue, Minneapolis, Minnesota; and

WHEREAS, the parties entered into an oral agreement on or about the 28th day of July, 1983, regarding the leasing of 603 and 703; and

WHEREAS, pursuant to said oral agreement, a partnership was formed and began business on July 28, 1983; and

WHEREAS, said oral partnership agreement was not definitive of all rights and obligations of the parties; and

WHEREAS, the parties agreed that the then existing oral partnership agreement be amended to provide further definition of the rights and obligations of the parties and be reduced to writing; ______________________________ .

NOW THEREFORE, THIS AGREEMENT WITNESSETH THAT IN CONSIDERATION of the covenants and agreements contained in this Agreement the parties agree as follows:

ARTICLE 1
INTERPRETATION

DEFINITIONS

1.1 In this Agreement, unless the context otherwise requires:

- (a) "Capital" means the aggregate capital contributed by the Partners to the Partnership.
- (b) "Code" means the Internal Revenue Code of 1954, as amended and as may be amended from time to time;

PARTNERSHIP AGREEMENT
OF
DURENBERGER - SCHERER PARTNERSHIP,
a Minnesota Partnership

This Partnership Agreement made effective the 28th day of July, 1983, and made between David F. Durenberger ("Durenberger") and Roger H. Scherer ("Scherer").

WHEREAS, Durenberger owns a condominium described as Apartment #603, 1225 LaSalle Avenue, Minneapolis, Minnesota; and

WHEREAS, Scherer owns a condominium described as Apartment #703, 1225 LaSalle Avenue, Minneapolis, Minnesota; and

WHEREAS, the parties entered into an oral agreement on or about the 28th day of July, 1983, regarding the sharing of profits of 603 and 703; and

WHEREAS, pursuant to said oral agreement, the parties agreed to share and specially allocate profits beginning July 28, 1983; and

WHEREAS, ~~said oral~~ agreement was not definitive of all rights and obligations of the parties; and

WHEREAS, the parties now agree that the existing oral partnership agreement be amended to provide further definition of the rights and obligations of the parties and be reduced to writing, and that the title to the properties be conveyed to this Partnership;

NOW THEREFORE, THIS AGREEMENT WITNESSETH THAT IN CONSIDERATION of the covenants and agreements contained in this Agreement the parties agree as follows:

ARTICLE 1
INTERPRETATION

DEFINITIONS

1.1 In this Agreement, unless the context otherwise requires:

(a) "Capital" means the aggregate capital contributed by the Partners to the Partnership.

(b) "Code" means the Internal Revenue Code of 1954, as amended and as may be amended from time to time;

(c) "Fiscal Period" means the fiscal period of the Partnership as provided for in section 2.4;

(d) "Property" means the condominium apartments 603 and 703 located at 1225 LaSalle Avenue, Minneapolis, Minnesota;

(e) "603" means that part of the Property constituting Apartment 603;

(f) "703" means that part of the Property constituting Apartment 703;

(g) "Partnership" means this Partnership organized under the laws of the State of Minnesota;

(h) "Sale" means the sale of the Property or any part thereof or interest therein, the receipt of compensation for the expropriation or condemnation of or injury to the Property or any part thereof or interest therein or the recovery of damage awards or insurance proceeds (other than business or interruption insurance proceeds) in respect thereof;

(i) "Taxable Income or Loss" in respect of any Fiscal Period means the amount of income or loss of the Partnership for such period as reported for Federal income tax purposes, excluding the amount of any gain or loss from the disposition of the Property;

(j) "Cash Flow" means Taxable Income before allowances for depreciation or amortization and other non-cash expenses less payments of principal on outstanding indebtedness and for capital improvements.

INTERPRETATION

1.2 For all purposes of this Agreement, except as otherwise expressly provided or unless the context otherwise requires:

(a) "this Agreement" means this Partnership Agreement as it may from time to time be supplemented or amended;

(b) the headings are for convenience only and do not form a part of this Agreement nor are they intended to interpret, define or limit the scope, extent or intent of this Agreement or any provisions hereof;

(c) all accounting terms not otherwise defined herein have the meanings assigned to them by, and all computations made pursuant to this Agreement, except as expressly provided otherwise, shall be made in accordance with, generally accepted accounting principles;

(d) any reference to a statute shall include and shall be deemed to be a reference to such statute and to the regulations made pursuant thereto, with all amendments made thereto and in force from time to time, and to any statute or regulation that may be passed which has the effect of supplementing or superseding the statute so referred to or the regulations made pursuant thereto;

ARTICLE II

RELATIONSHIP BETWEEN PARTNERS

2.1 Formation of Partnership. Durenberger and Scherer have heretofore formed a Partnership as a Minnesota partnership which Partnership shall hereafter continue pursuant to this Agreement. The Partnership shall carry on business under the name "Durenberger - Scherer Partnership" or such other name or names as the partners may determine from time to time.

2.2 Business of the Partnership. The Partnership shall carry on the business of leasing 603 and 703.

2.3 Principal Place of Business. The principal place of business of the Partnership shall be at 1225 LaSalle Avenue, Minneapolis, Minnesota, or such other place or places as may be determined by the Partners.

2.4 Fiscal Period. The first fiscal period of the Partnership shall end on December 31 of each calendar year.

2.5 Limitation on Authority of Partners.

No Partner shall, without the consent of the other Partner:

(a) execute any document which binds or purports to bind the Partnership or any Partner;

(b) hold himself out as having the power or authority to bind the Partnership or any Partner as such;

(c) undertake any obligation or responsibility on behalf of the Partnership;

(d) bring any action for partition or sale in connection with the Property or other assets of the Partnership, whether real or personal, or register or permit any lien or charge in respect of the Property; or

(e) compel a partition, judicial or otherwise, of any of the assets of the Partnership distributed to the Partners in kind.

2.6 Unlimited Liability of Partners. The Partners shall be jointly and severally liable for the debts, liabilities and obligations of the Partnership to the extent required by law. However, no Partner shall be liable, responsible or accountable in damages or otherwise to the Partnership or to the other Partner for any act performed in good faith within the scope of this Agreement in connection with the affairs of the Partnership, except with respect to any fraud, intentional misconduct, gross negligence or breach of any fiduciary duty or covenant contained in this Agreement.

ARTICLE III

CAPITAL CONTRIBUTIONS AND ACCOUNTS

3.1 Capital Contribution by Partners. The capital of the Partnership is as follows as of the date of this Agreement:

(a) 603, as described in Schedule A attached to this Agreement, contributed by Durenberger.

(b) 703, as described in Schedule B attached to this Agreement, contributed by Scherer.

The present value of 603 is $63,000. The adjusted tax basis of 603, as of the date of this Agreement, is set forth in Schedule A.

The present value of 703 is $63,000. The adjusted tax basis of 703, as of the date of this Agreement, is set forth in Schedule B.

3.2 Additional Contributions to Capital by Partners. No Partner shall be required to make any additional contributions to the capital of the Partnership except as follows:

(a) Any Partner who has a negative balance in his capital account, after application of Article V, shall be required to contribute to the Partnership an amount of cash sufficient to raise such balance to zero.

(b) Durenberger shall contribute to the Partnership any deficit cash flow resulting from the operation of 703.

(c) Scherer shall contribute to the Partnership any deficit cash flow resulting from the operation of 603.

3.3 Capital Accounts. A separate capital account shall be maintained by the Partnership for each Partner in accordance with sound tax accounting principles as required by the Code. The such hypothetical sales shall be made subsequent to any adjustments to capital account balances resulting from actual sales, exchanges, or other dispositions of property made pursuant to dissolution.

3.4 Creditor's Interest in Partnership. No creditor who makes a nonrecourse loan to the Partnership shall have or acquire, at any time as a result of making the loan, any direct or indirect interest in the profits, capital or property of the Partnership other than as a secured creditor, notwithstanding any other provisions in this Agreement.

ARTICLE IV

TERM

4.1 Term of Partnership. The Partnership shall terminate on Thirty (30) days written notice by either Partner to the other, unless otherwise terminated pursuant to this Agreement.

ARTICLE V

DISTRIBUTIONS AND ALLOCATIONS

5.1 Cash Flow Distributions. The Partnership shall distribute to the Partners the cash flow of the Partnership within a reasonable time after the end of each quarter period during the Fiscal Period, except, however, the Partnership may retain such amounts as it deems reasonable in order to provide for any reasonably anticipated expenditures or liabilities of the Partnership, including, without limitation, reserves for replacement and capital improvements and debt service for which adequate provision has not been made. All such distributions to the Partners shall be made as follows: all cash flow resulting from the operation of 703 shall be distributed to Durenberger and all cash flow resulting from the operation of 603 shall be distributed to Scherer. All other cash flow shall be distributed in accordance with the ratio in which each Partner's capital account bears to the total capital accounts of the Partnership.

5.2 Distributions of Net Proceeds. Any net proceeds from insurance, condemnation or sale of any of the assets of the Partnership shall be distributed to the Partners in the same manner as Cash Flow Distributions.

5.3 Distributions from Refinancing Proceeds. Any net proceeds from refinancing shall be distributed to the Partners in the same manner as Cash Flow Distributions.

5.4 Distributions Upon Liquidation. Distributions in liquidation of the Partnership shall be made in accordance with Article VII.

5.5 Allocation of Taxable Income or Loss. Taxable income or loss shall be allocated to each Partner as follows:

(a) All such income or loss before depreciation resulting from the operation of 703 shall be allocated to Durenberger;

(b) All such income or loss before depreciation resulting from the operation of 603 shall be allocated to Scherer;

(c) All depreciation with respect to 603 shall be allocated to Durenberger and all depreciation with respect to 703 shall be allocated to Scherer;

(d) All other income or loss shall be allocated in the ratio in which each Partner's capital account, immediately prior to such allocation, bears to the total capital accounts of the Partnership at such time.

(e) Should any fees or other compensation paid or accrued to any Partner (and deducted by the Partnership in reliance on Section 707(a) and/or 707(c) of the Code) be disallowed as deductions and treated as Partnership distributions, the Partnership shall allocate to such Partner items of Gross Income (as defined in the Code) in the Fiscal Period such fees or other compensation which were deducted in computing Taxable Income or Loss in an amount equal to the amount of any fees or other compensation disallowed.

(f) Should the allocation of any item of loss or deduction exceed the tax basis, as determined under the Code, of any Partner's interest in the Partnership, the amount of such item of loss or deduction which is in excess of such tax basis shall not be allocated to such Partner but shall be allocated to the other Partner.

(g) Should the allocation of any item of loss or deduction attributable to nonrecourse debts secured by the Property cause the sum of the negative capital account balances of the Partner or Partners receiving such allocation to exceed an amount equal to the "minimum gain" (as that term is defined in Proposed Treasury Regulation 1.704-1(b)(4)(iv) or its successor regulation) that would be realized upon foreclosure of the Property, no items of loss or deduction attributable to such nonrecourse debts shall be allocated to any Partner whose capital account is negative if the effect of such allocation would be to cause such negative capital account to exceed the amount of gain recognized upon such foreclosure. Any such item of loss or deduction not allocated to a Partner shall be allocated to the other Partner. Notwithstanding the foregoing, if at any time a Partner's negative capital account exceeds such excess, that Partner shall thereafter be allocated items of Gross Income (as defined in the Code) which allocations shall coincide, in amount and time, with any principal reduction in the amount of the nonrecourse debt, and which allocations shall not be greater than an amount necessary to cause such negative capital account to exceed the amount of gain which would be recognized upon such foreclosure.

5.6 Allocation of Gain or Loss on Property Disposition. Gains and losses from the sale, exchange or other disposition of Property, whether voluntary or involuntary, shall be allocated as follows:

(a) With respect to 603, gain shall first be allocated to Durenberger up to an amount equal to the difference between $63,000 and the adjusted basis of 603 under the Code at the time of disposition, and the balance of any gain shall be allocated to Scherer. All losses shall be allocated to Durenberger.

(b) With respect to 703, gain shall first be allocated to Scherer up to an amount equal to the difference between $63,000 and the adjusted basis of 703 under the Code at the time of disposition, and the balance of any gain shall be allocated to Durenberger, all losses shall be allocated to Scherer.

(c) All other gains and losses, if any, shall be allocated to each Partner in accordance with the ratio of such Partner's capital account to the total capital accounts of the Partnership.

ARTICLE VI

BOOKS AND RECORDS

6.1 Books of Account. The Partners shall keep and maintain, or cause to be kept and maintained, at a place determined by the Partners, books of account and records of the Partnership.

6.2 Employment of Auditor. The Partners may retain an independent auditor to audit the financial statements of the Partnership, for, and as at the end of, each Fiscal Period.

6.3 Inspection of Books and Records. The Partners may inspect the books and records of the Partnership at any reasonable time for any proper purpose.

ARTICLE VII

DISSOLUTION OF PARTNERSHIP

7.1 The Partnership shall be dissolved on the earliest of:

(a) The expiration of the terms set forth in Section 3.1;

(b) The sale, exchange or other disposition of all or substantially all of the assets of the Partnership;

(c) The final decree of a court that dissolution or liquidation is required under applicable law; or

(d) The death, incompetence, bankruptcy, insolvency or receivership of any one of the Partners.

7.2 Distribution of Proceeds of Liquidation. Notwithstanding any other provision in this Agreement to the contrary, the Partnership shall distribute, in the following order of priority, the Partnership assets and the net proceeds from liquidation of the Partnership (including sale proceeds of the Property) as follows:

(a) To pay the expenses of liquidation and the debts and liabilities of the Partnership to its creditors or to make due provision for payment thereof (including the assumption by a purchaser of the Property of the balance secured by a mortgage charging the Property or any other indebtedness of the Partnership);

(b) To provide reserves the Partnership considers reasonably necessary for any contingent or unforeseen liability or obligation of the Partnership; provided, however, that the foregoing shall not be construed to include any repayment of any Partner's capital contributions or any capital account balance of any Partner;

(c) The remaining assets or proceeds shall be distributed to the Partners in accordance with their capital account balances. All assets shall be valued for this purpose at their fair market value at the time of distribution. Any Partner who has a negative balance in his capital account shall contribute to the Partnership immediately prior to liquidation an amount of cash sufficient to raise such balance to zero.

7.3 Distributions of Property. Each Partner shall have the right to demand and receive a distribution in a form other than cash, but nothing herein shall require a distribution in a form other than cash. In the event any Partner demands a distribution of property, then Durenberger may demand and receive 703 and Scherer may demand and receive 603.

7.4 Termination of Partnership. The Partnership shall terminate when after payment of or due provisions for the payment of all debts, liabilities and obligations of the Partnership to creditors, all of its assets or the net proceeds therefrom have been distributed as provided in this Article 7.

ARTICLE VIII

NOTICES

8.1 Form and Delivery. Any notice, direction or request required or permitted to be given hereunder shall be in writing and shall be given by personal service, telex, telegram or by registered letter, with postage thereon fully prepaid, to be addressed as follows: If to Durenberger, ______________________________

____;

and if to Scherer, ______________________________________

____.

Any notice, direction or request delivered personally or by telex or telegram shall be deemed to have been received by and given to the addressee on the day of delivery. Any notice, direction or request mailed as aforesaid shall be deemed to have been received by and given to the addressee on the third business day following the date of mailing except in the event of a disruption of postal service in which event notice shall be delivered personally or given by telex or telegram.

ARTICLE IX

BANKING

9.1 Banking. All funds of the Partnership shall be deposited in its name in such checking account(s) and in such bank(s) as shall be designated by the Partners. All withdrawals therefrom are to be made upon checks signed by any Partner or by a party or parties designated by a Partner.

ARTICLE X

MISCELLANEOUS

10.1 Governing Law. This Agreement and the application of interpretation hereof shall be governed exclusively by its term and by the laws of the State of Minnesota and each Partner irrevocably submits to the jurisdiction of the court of the State of Minnesota.

10.2 Severability. Each provision of this Agreement is intended to be severable. If any provision hereof is illegal or invalid, such illegality or invalidity shall not affect the validity of the remainder hereof.

10.3 Counterparts. This Agreement may be executed in any number of counterparts with the same effect as if all parties hereto had signed the same document. All counterparts shall be constructed together and shall constitute one and the same agreement.

10.4 Time. Time shall be of the essence hereof.

10.5 Further Assurances. The parties hereto agree to execute and deliver such further and other documents and perform and cause to be performed such further and other acts and things as may be necessary or desirable in order to give full effect to this Agreement and every part thereof.

10.6 Binding Effect. This Agreement shall be binding upon and inure to the benefit of the parties hereto, and, to the extent permitted hereunder, their respective successors and assigns.

10.7 Entirety of Agreement. This Agreement expresses the entire understanding between the partners, and no provision of the within Agreement may be changed, modified, altered or in any form or manner amended, unless such further agreement is committed to writing and signed by all parties as a supplemental agreement. This Agreement shall inure to the benefit of, and be binding upon, the partners and their heirs, executors, administrators and assigns.

David F. Durenberger

Roger H. Scherer

SCHEDULE A

CAPITAL CONTRIBUTION BY DAVID F. DURENBERGER

Condominium Street Address:

Apartment #703, 1225 LaSalle Avenue, Minneapolis, Minnesota

Condominium Legal Description:

Condominium's Fair Market Value:

$63,000.00

David F. Durenberger's Adjusted Tax Basis:

$

SCHEDULE B

CAPITAL CONTRIBUTION BY ROGER H. SCHERER

Condominium Street Address:

Apartment #603, 1225 LaSalle Avenue, Minneapolis, Minnesota

Condominium Legal Description:

Apartment No. 703 and .44% of undivided interest in the common areas and facilities, Apartment Ownership No. 128, The Tower of 1200 On The Mall, 1225 LaSalle Avenue, Minneapolis, Minnesota located upon the following described land:

Tract A, Registered Land Survey No. 1487,

according to the Declaration of Apartment Ownership and attached By-Laws filed as Document No. 1321937 on the 21st day of March, 1979, and the Floor Plans filed as Document No. 1321938 on the 21st day of March, 1979, files of the Registrar of Titles;

each apartment is intended for residential use subject to the provisions as more fully set forth in said Declaration and By-Laws;

subject to the provisions of Minnesota condominium act, Minnesota Statutes 1976, Chapter 515 and acts amendatory thereof;

subject to restrictions, rights and easements granted over common areas and facilities as contained in the Declaration Document No. 1321937.

Condominium's Fair Market Value:

$63,000.00

Roger H. Scherer's Adjusted Tax Basis:

$

UNITED STATES SENATE
WASHINGTON, D.C. 20510

DAVE DURENBERGER
MINNESOTA

March 7, 1984

Mr. Gene Holderness
6004 Dublin Circle
Edina, Minnesota 55435

Re: 1225 LaSalle

Dear Gene:

Last summer you undertook to help me resolve a longstanding need to deal with the economics of home ownership in Minnesota. The result was that on or about July 28, 1983, a rental agreement was entered into with Roger Scherer for the joint ownership of condominiums 603 and 703 at 1225 LaSalle ~~in~~ Minneapolis. At my initiative, a written agreement for such joint ownership was executed on or about December 29-30, 1983.

On the basis of the original agreement (1) I have been renting 603 on a per diem basis of $65.00 per night since July 28, 1983; (2) I have paid mortgage, real estate tax, insurance, condo fee, utility and repair expenses and continued to do so; (3) I presume that Roger Scherer does the same of 703 and continues to receive income from 703 for the joint entity.

My problem is this: If the above accurately states our agreement, then how between Roger and me, do we account for income, expense and tax liability for this joint ownership in 1983? 1984?

It is my further understanding that your original recommendation that 603 be refinanced in connection with the change in ownership is no longer appropriate income or tax policy. I am told that this is your opinion and Mike Mahoney's.

I presume that I face an April 15, 1984 deadline for filing my tax return. For various reasons I had contemplated filing early. I certainly do not contemplate filing late. But I feel trapped. What are you able to accomplish for me?

Sincerely,

Dave Durenberger
United States Senator

cc: Mike Mahoney
Roger Scherer

MAR 12 1984
CURTIN & MAHONEY

SPECIAL
COUNSEL
HEARING
EX. 315

TO: TOM

FROM: LORI

RE: CONDO TRANSACTION

DATE: MARCH 13, 1984

SPOKE WITH MY CONTACTS IN ETHICS AND RULES AND NO ONE HAS A PROBLEM WITH THE PARTNERSHIP SITUATION. ETHICS SEEMED TO INDICATE THAT IT WOULDN'T BE THE FIRST TIME IT HAD BEEN DONE (REFERRED TO SEN. GLENN AND FLORIDA PROPERTIES).

RULES ALSO SAID NO PROBLEM, BUT I DECIDED THAT IT WOULD BE WISE TO CHECK WITH ETHICS ALSO.

I STILL THINK THAT WE WOULD WISE TO GET THE PARTNERSHIP ACCOUNT UP AND RUNNING. IT JUST LOOKS BETTER.

SPECIAL
COUNSEL
HEARING
EX. 325

CURTIN & MAHONEY, P. A.
ATTORNEYS AT LAW
4180 MULTIFOODS TOWER
MINNEAPOLIS CITY CENTER
MINNEAPOLIS, MINNESOTA 55402

TELEPHONE (612) 333-8411
TELECOPIER (612) 339-6962

RICHARD T. CURTIN
MICHAEL C. MAHONEY
SUSAN L. NEUMEYER
DOUGLAS J. CARNEY
DONNA E. HANBERY
DEANNE M. GRECO
EDWARD C. ANDERSON
MICHAEL W. SCHLEY
JEFFREY C. ROBBINS
KENNETH COREY-EDSTROM

OF COUNSEL
ALVIN H. GANSAL
ADMITTED IN D.C. & OHIO

WASHINGTON D. C. OFFICE
1920 N STREET N.W., SUITE 420
WASHINGTON, D. C. 20036
TELEPHONE (202) 887-0716
TELECOPIER (202) 833-8344
TELEX 64-800

April 10, 1984

Senator David Durenberger
Senate Russell 375
Washington, D.C. 20510

ATTENTION: Ms. Lori Krage

RE: 703/603 ASSOCIATION
OUR FILE NO. 1468-005

Dear David:

Enclosed please find one copy of the following documents for 703/603 Association:

1983 Schedule K-1
1983 U.S. Partnership Return of Income
1983 Minnesota Return of Partnership Income

I have also enclosed a copy of the computations used to arrive at the amounts contained on the partnership returns and computations of your capital accounts--on an internal and a tax basis. The computations of the internal capital accounts reveal that Roger should make a cash contribution to the partnership in the amount of $135.59, in order to equalize the accounts as of December 31, 1983. Once all bills and rents have been transferred to Jean Stow, we will make a final computation to equalize the internal capital accounts.

Additionally, I have included an interesting analysis of the various forms of ownership that had been proposed in the past year. This analysis indicates that the current form of ownership (703/603 Association) on the whole, yields the greatest tax and cash flow consequences with the least risk of attack by the Internal Revenue Service.

F2ADJSnjs0410842

SPECIAL
COUNSEL
HEARING
EX. 327

Please feel free to call me with any comments or questions concerning the above matters.

Very truly yours,

DAVID J. STEINGART

Enclosures

cc: Mr. Roger Scherer

I will be sending you a copy of all Partnership documents soon.

F2ADJSnjs0410842

DULE K-1
m 1065)
partment of the Treasury
Internal Revenue Service

Partner's Share of Income, Credits, Deductions, etc.

For calendar year 1983 or fiscal year
beginning .... 1983, and ending .... 19...

OMB No. 1545-0099

1983

Partner's identifying number ▶ 471-26-4210

Partner's name, address, and ZIP code
David Durenberger
7732 Canal Court
Mclean Virginia 22102

Partnership's identifying number ▶ applied for

Partnership's name, address, and ZIP code
703/603 Association
5649 Interlached Circle
Edina, Minn. 55436

A Is partner a general partner (see page 3 of instructions)? ☒ Yes ☐ No

B Partner's share of liabilities (see page 10 of instructions):
Nonrecourse $..............
Other $ 18,432

C What type of entity is this partner? ▶ individual

D Enter partner's percentage of:	(i) Before decrease or termination	(ii) End of year
Profit sharing	50 %	50 %
Loss sharing	50 %	50 %
Ownership of capital	50 %	50 %

E IRS Center where partnership filed return ▶ Ogden, Ut

F Reconciliation of partner's capital account:

(a) Capital account at beginning of year	(b) Capital contributed during year	(c) Ordinary income (loss) from line 1	(d) Income not included in column (c), plus nontaxable income	(e) Losses not included in column (c), plus unallowable deductions	(f) Withdrawals and distributions	(g) Capital account at end of year
0	32,489	<1281>		1419	2665	27125

	(a) Distributive share item	(b) Amount	(c) 1040 filers enter the amount in column (b) on:
Income (Loss)	1 Ordinary income (loss)	<1281>	Sch. E, Part II, col. (d) or (e)
	2 Guaranteed payments		Sch. E, Part II, column (e)
	3 Interest from All-Savers Certificates		Sch. B, Part I, line 4
	4 Dividends qualifying for exclusion		Sch. B, Part II, line 9
	5 Net short-term capital gain (loss)		Sch. D, line 4, col. f. or g.
	6 Net long-term capital gain (loss)		Sch. D, line 12, col. f or g.
	7 Net gain (loss) from involuntary conversions due to casualty or theft		See attached instructions
	8 Other net gain (loss) under section 1231		Form 4797, line 1
	9 Other (attach schedule)		(Enter on applicable lines of your return)
Deductions	10 Charitable contributions: 50% .... 30% 20%		See Form 1040 instructions
	11 Expense deduction for recovery property (section 179)		Sch. E, Part II, line 28
	12 a Payments for partner to an IRA		See Form 1040 instructions
	b Payments for partner to a Keogh Plan (Type of plan ▶ ....)		Form 1040, line 26
	c Payments for partner to Simplified Employee Pension (SEP)		Form 1040, line 26
	13 Other (attach schedule)		(Enter on applicable lines of your return)
Credits	14 Jobs credit		Form 5884
	15 Credit for alcohol used as fuel		Form 6478
	16 Credit for income tax withheld		See Form 1040 instructions
	17 Other (attach schedule)		(Enter on applicable lines of your return)
Other	18 a Gross farming or fishing income		See attached instructions
	b Net earnings (loss) from self-employment		Sch. SE, Part I
	c Other (attach schedule)	[redacted]	(Enter on applicable lines of your return)
Tax Preference Items	19 a Accelerated depreciation on nonrecovery real property or 15-year real property	574	Form 6251, line 4c
	b Accelerated depreciation on leased personal property or leased recovery property other than 15-year real property	[redacted]	[redacted]
	c Depletion (other than oil and gas)		Form 6251, line 4d
	d (1) Excess intangible drilling costs from oil, gas, or geothermal wells		Form 6251, line [illegible]
	(2) Net income from oil, gas, or geothermal wells		See Form 6251 instructions
	e Net investment income (loss)		[redacted]
	f Other (attach schedule)		Form 6251, line 2e(2) See attached instructions

For Paperwork Reduction Act Notice, see Form 1065 Instructions.

Schedule K-1 (Form 1065) 1983

Form 1065
Department of the Treasury
Internal Revenue Service

U.S. Partnership Return of Income

▶ For Paperwork Reduction Act Notice, see Form 1065 Instructions.

For calendar year 1983, or fiscal year beginning ...., 1983, and ending ...., 19...

OMB No. 1545 0099

1983

A Principal business activity (see page 4 of Instructions): Realestate leasing
B Principal product or service (see page 14 of Instructions): Condominiums
C Business code number (see page 14 of Instructions): 6511

Use IRS label. Otherwise, please print or type.
Name: 703 / 603 Association
Number and street: 5649 Interlachen Circle
City or town, State, and ZIP code: Edina, Minn 55436

Client Copy

D Employer identification number: applied for
E Date business started: 7/28/84
F Enter total assets at end of tax year: $

G Check method of accounting: (1) ☒ Cash (2) ☐ Accrual (3) ☐ Other
H Check applicable boxes: (1) ☐ Final return (2) ☐ Change in address (3) ☐ Amended return
I Check if the partnership meets all the requirements shown on page 4 of the Instructions under Question I . . . . ▶ ☒
J Number of partners in this partnership ▶ ....

		Yes	No
K	Is this partnership a limited partnership (see page 3 of Instructions)?		X
L	Is this partnership a partner in another partnership?		X
M	Are any partners in this partnership also partnerships?		X
N	(1) Was there a distribution of property or a transfer of a partnership interest during the tax year?		X
	(2) If "Yes," is the partnership making an election under section 754? If "Yes," attach a statement for the election. (See page 4 of the Instructions before answering this question.)		
O	At any time during the tax year, did the partnership have an interest in or a signature or other authority over a bank account, securities account, or other financial account in a foreign country (see page 4 of Instructions)?		X
P	Was the partnership the grantor of, or transferor to, a foreign trust which existed during the current tax year, whether or not the partnership or any partner has any beneficial interest in it? If "Yes," you may have to file Forms 3520, 3520-A, or 926. (See page 5 of Instructions.)		X
Q	Are there any specially allocated items of income, gain, loss, deduction, credit, etc. (see page 5 of Instructions)		X

Income

1a	Gross receipts or sales $ .... 1b Minus returns and allowances $ .... Balance ▶	1c	
2	Cost of goods sold and/or operations (Schedule A, line 7)	2	
3	Gross profit (subtract line 2 from line 1c)	3	
4	Ordinary income (loss) from other partnerships and fiduciaries	4	
5	Nonqualifying interest and nonqualifying dividends	5	
6a	Gross rents $ 4765 6b Minus rental expenses (attach schedule) $ 8744		
c	Balance net rental income (loss) ▶	6c	<3979>
7	Net income (loss) from royalties (attach schedule)	7	
8	Net farm profit (loss) (attach Schedule F (Form 1040))	8	
9	Net gain (loss) (Form 4797, line 14)	9	
10	Other income (loss)	10	
11	TOTAL income (loss) (combine lines 3 through 10)	11	

Deductions

12a	Salaries and wages (other than to partners) $ .... 12b Minus jobs credit $ .... Balance ▶	12c	
13	Guaranteed payments to partners (see page 6 of Instructions)	13	
14	Rent	14	
15a	Total deductible interest expense not claimed elsewhere on return (see page 6 of Instructions) — 15a		
b	Minus interest expense required to be passed through to partners on Schedule K-1, lines 13, 20a(2), and 20a(3) and Schedule K, lines 13, 20a(2), and 20a(3) (if Schedule K is required) — 15b		
c	Balance ▶	15c	
16	Taxes	16	
17	Bad debts (see page 7 of Instructions)	17	
18	Repairs	18	
19a	Depreciation from Form 4562 (attach Form 4562) $ 5479 19b Minus depreciation claimed on Schedule A and elsewhere on return $ 5479 Balance ▶	19c	None
20	Depletion (*Do not deduct oil and gas depletion. See page 7 of Instructions.*)	20	
21a	Retirement plans, etc. (see page 7 of Instructions)	21a	
b	Employee benefit programs (see page 7 of Instructions)	21b	
22	Other deductions (attach schedule)	22	None
23	TOTAL deductions (add amounts in column for lines 12c through 22)	23	None
24	Ordinary income (loss) (subtract line 23 from line 11)	24	<3979>

Please Sign Here

Under penalties of perjury, I declare that I have examined this return, including accompanying schedules and statements, and to the best of my knowledge and belief it is true, correct, and complete. Declaration of preparer (other than taxpayer) is based on all information of which preparer has any knowledge.

▶ Signature of general partner ▶ Date

Paid Preparer's Use Only

Preparer's signature ▶ 003369 Date Check if self-employed ▶ ☐ Preparer's social security no.

Firm's name (or yours, if self-employed) and address ▶ CURTIN & MAHONEY, P.A.
~~[illegible] TOWER~~
MINNEAPOLIS MINNESOTA 55402

FED. I.D. 41-1235945 TEL: (612) 333-5412
~~MN I.D. 6626307~~
S.S. 343-56-8327

E.I. No. ▶
ZIP code ▶

Form M-3 Minnesota Partnership Return of Income 1983

(To be filed also by syndicates, pools, joint ventures, etc.)

For calendar year 1983 or fiscal year beginning ________, 1983, ending ________, 19 ___

Mail return to:
Minn. Partnership Income Tax
Centennial Office Building
St. Paul, Minnesota 55145

Name: 703/603 Association
Address: 5649 Interlachen Circle
County: Henn.
City or post office: Edina
State: Minn
Zip code: 55436
Minnesota identification number: Applied for
Federal identification number: Applied for
Fill in your former name or address if changed since your 1982 return.

Did the partnership withhold Minnesota income taxes from employees and send in required reports during the year 1983? ☐ Yes ☒ No

Did the partnership file Information Return Summary Form M-10 and federal Form(s) 1099 and 8496 for the year 1983? ☐ Yes ☒ No

Is this your final return? ☐ Yes ☐ No

Reconciliation of Net Income

1 Ordinary income (loss) (from line 24 of federal Form 1065)	1	3979
2 Additions (list)	2	
3 Total (add lines 1 and 2)	3	3979
4 Deductions (list)	4	
5 Minnesota net income (subtract line 4 from line 3)	5	3979
6 Minnesota net income after apportionment (from Form M-5. If no apportionment, fill in the amount from line 5 above)	6	3979

Schedule of Partners' Pro-Rata Shares of Minnesota Income, Credits and Deductions (if you need more space, attach a separate sheet)

Partner's shares of:	Name of partner A	Name of partner B	Name of partner C	Name of partner D
	David Durenberger	Roger Scherer		
	Social security number 471 36 4210	Social security number 477 34 7479	Social security number	Social security number
	Address 7732 Canal Ct. Mclean, VI	Address 7118 Northwillow Ln. Minneapolis, MN 55	Address	Address
7 Ordinary income (loss)	<1281>	<2698>		
8 Income not included in line 7				
9 Losses not included in line 7	<1418>			
10 Farm gain (loss) (attach federal Schedule 1040F)				
11 Losses from sources outside Minnesota				
12 Federal tax preference items included in line 11	574	1218		
13 Accelerated cost recovery system modification				
14 Expenses for gasoline and special fuel tax credit				
5 Qualifying expenses for residential energy credit				
6 Qualifying expenses for research and development credit				

tner — I declare under the penalties of criminal liability for willfully making a false return, that this return is true, correct and complete to the best of my knowledge and belief. Preparer — This return is true, correct and complete to the best of my knowledge and belief.

Signature of general partner ________ Date ________ Telephone number ( )

Signature of preparer other than partner ________ Minn. I.D. or soc. sec. no. ________ Date ________ Telephone number ( )

003370

Important: All partnerships are required to attach a copy of their federal Form 1065, including Schedules K and K-1.

703/603 ASSOCIATION

1983 INCOME STATEMENT

	ROGER 703	DAVID 603	TOTALS
INCOME			
David Durenberger		$2,665.00	$2,665.00
Roger Scherer	$2,100.00		2,100.00
Total Income	$2,100.00	$2,665.00	$4,765.00
EXPENSES			
Interest		$1,307.86	$1,307.86
Real Estate Tax	$ 825.80	334.92	1,160.72
Registration		20.00	20.00
Utilities		75.83	75.83
Association Fees	730.00	743.65	1,473.65
Insurance		56.19	56.19
Repairs		63.20	63.20
Management Commissions	525.00		525.00
Total Expenses	$2,080.80	$2,601.65	$4,682.45
Principal Paid		$ 179.74	$ 179.74
Total Cash Payments	$2,080.80	$2,781.39	$4,862.19
NET CASH FLOW (Income-Cash Payments)	$ 19.20	$ (116.39)	$ (97.19)
Principal Paid		179.74	179.74
Depreciation	(2,580.00)	(2,899.00)	(5,479.00)
TAXABLE INCOME	$(2,560.80)	$(2,835.65)	$(5,396.45)

703/603 ASSOCIATION

COMPUTATION OF "ORDINARY LOSS" FOR K-1'S

Rents	$4,765.00
Expenses	(4,682.45)
Depreciation	(5,479.00)
Net Loss	$(5,396.45)
I.R.C. § 280A Adjustment*	1,417.83
To 1065, Line 24	$(3,978.62)

To K-1's:

Roger : Ordinary Loss ½ X $(5,396.45)	$(2,698.23)
David : Ordinary Loss ½ X (-5,396.45) + 1,417.83	$(1,280.40)

* I.R.C. § 280A Adjustment:

David's 603 Gross Income	$(2,665.00 X ½) =	$1,332.50
David's 603 Expenses	$(2,601.65 X ½) =	$(1,300.83)
David's Depreciation 603	$(2,899.00 X ½) =	$(1,449.50)
		$(1,417.83)

F2ADJSnjs0411842

703/603 ASSOCIATION

TAX CAPITAL ACCOUNTS 1983

	ROGER	DAVID	TOTAL
Tax Bases of Condominiums Contributed to Partnership	$42,999	$48,324	$91,323
Less Mortgage Assumed by Partnership		(36,875)	(36,875)
One-half Mortgage to Each	18,437	18,438	36,875
Tax Basis of Total Beginning Contributions	$61,436	$29,887	$91,323
Contributions (Expenses Paid)	2,081	2,602	4,683
Tax Basis of Total Contributions During Year	$63,517	$32,489	$96,006
Withdrawals (Rents Retained)	(2,100)	(2,665)	(4,765)
Ordinary Losses	(2,698)	(1,281)	(3,979)
Unallowed Losses		(1,418)	(1,418)
Total Ending Tax Capital Accounts	$58,719	$27,125	$85,844

703/603 ASSOCIATION

INTERNAL CAPITAL ACCOUNTS

	ROGER	DAVID
Fair Market Value of Condominiums Contributed to Partnership	$63,000.00	$63,000.00
Expense Payments by Partners	2,080.80	2,781.39
Withdrawals (Rents Retained)	(2,100.00)	(2,665.00)
12-31-83 Totals	$62,980.80	$63,116.39
Required Capital Contribution by Roger to Equalize Capital Accounts as of 12-31-83	135.59	
Totals	$63,116.39	$63,116.39

703/603 ASSOCIATION

SUMMARY OF TAX CONSEQUENCES OF VARIOUS PROPOSED FORMS OF OWNERSHIP

Partnership Agreement drafted by Curtin & Mahoney, P.A.:

	DAVID	ROGER
Tax Loss	$(1,280)	$(2,698)
Cash Flow (after equalization payment by Roger)	$ (49)	$ (49)

Partnership Agreement drafted by Richard Langlais (assuming no I.R.C. §704(b) limitations):

	DAVID	ROGER
Tax Loss	$ -0-	$(2,517)
Cash Flow	$ 19	$ (116)

Partnership Agreement drafted by Richard Langlais (assuming no I.R.C. §704(b) or §280A limitations--a doubtful assumption):

	DAVID	ROGER
Tax Loss	$(2,880)	$(2,517)
Cash Flow	$ 19	$ (116)

Tax-Free Exchange (I.R.C.§1031):

This alternative was not feasible because Condominium #603 was not held for investment or used in a trade or business. Thus, the exchange would have triggered capital gain to David.

Status Quo (David retains ownership to #603):

	DAVID	ROGER
Tax Loss	$(1,643)	$(2,561)
Cash Flow	$(2,781)	$ 19

703/603 ASSOCIATION
5649 INTERLACHEN CIRCLE
EDINA, MINNESOTA 55436
(612) 920-2249

4/17/85
#108

CUSTOMER
Sen. D. Durenberger
SR 375
Washington DC 20510

PLEASE RETURN THIS STUB WITH YOUR REMITTANCE.
YOUR CANCELLED CHECK IS YOUR RECEIPT.

$ 340.00

		Rent for Condo #603				
March '85		②, ③, 13, 14, 22, 23	6 @ 65.00		390	00

CURTIN, MAHONEY & CAIRNS
A PROFESSIONAL ASSOCIATION
ATTORNEYS AT LAW

RICHARD T. CURTIN
MICHAEL C. MAHONEY
JOHN A. CAIRNS
SUSAN L. NEUMEYER
DOUGLAS J. CARNEY
DONNA E. HANBERY
DEANNE M. GRECO
EDWARD C. ANDERSON
MICHAEL W. SCHLEY
JEFFREY C. ROBBINS
KENNETH COREY-EDSTROM
DAVID J. STEINGART

4350 MULTIFOODS TOWER
MINNEAPOLIS CITY CENTER
MINNEAPOLIS, MINNESOTA 55402
TELECOPIER (612) 339-6962
TELEX 29163
TELEPHONE (612) 333-9411

1920 N STREET N.W.
SUITE 420
WASHINGTON, D.C. 20036
TELECOPIER (202) 833-8344
TELEX 64 509
TELEPHONE (202) 887-0716

OF COUNSEL
ALVIN H. GANDAL
ADMITTED IN D.C. AND OHIO

REPLY TO

October 17, 1985 Minneapolis

Mr. Warren B. Rudman
Chairman of Ethics Committee
Hart Senate Office Building
Room 220
2nd & Constitution Ave. NE
Washington, DC 20510

SENATOR DAVID DURENBERGER
OUR FILE NO. 01468-012

Dear Mr. Rudman:

Enclosed for your review and approval please find a Revocable Trust for the Management of Investment Property between Senator David F. Durenberger and Michael C. Mahoney, trustee.

Also enclosed please find Information Regarding the Trustee and Assets of a Blind Trust Under Section 102(e)(3) of the Ethics in Government Act of 1978.

After you have had an opportunity to review these documents, please contact the undersigned with your comments.

Very truly yours,

Michael Schley
MICHAEL W. SCHLEY

Enclosures

cc: Douglas Kelley

F15HSKA/MWSsak1017852

SPECIAL
COUNSEL
HEARING
EX. 333

REVOCABLE TRUST FOR THE MANAGEMENT OF INVESTMENT PROPERTY

THIS REVOCABLE TRUST AGREEMENT is entered into this 18th day of June, 1985, by and between:

DAVID F. DURENBERGER
7732 Canal Court
McLean, Virginia 22101
(hereinafter referred to as "Grantor")

and

MICHAEL C. MAHONEY
Curtin, Mahoney & Cairns, P.A.
4150 Multifoods Tower
Minneapolis City Center
Minneapolis, MN 55402
(hereinafter referred to as "Trustee")

WHEREAS, the Grantor desires to transfer a portion of his assets held for investment purposes in trust for his own benefit during his lifetime in order to avoid any conflicts of interest or the appearance of impropriety in the conduct of the duties and responsibilities of his position of employment, and

WHEREAS, the Grantor desires to disclaim any right or interest to be informed of the identity of assets of the trust estate which are held, managed, and invested by the Trustee,

NOW, THEREFORE, the parties agree as follows:

1. Transfer of Trust Property. Grantor does hereby convey, transfer, and deliver to Trustee the property of Grantor itemized on Schedule A attached hereto. This property, together with any other property that hereafter may be added to this trust, shall be held, managed, and distributed by Trustee as hereinafter provided.

2. Renunciation by the Grantor to be Informed of the Identity of Assets Comprising the Trust Estate. During the term of this trust, the Trustee shall not disclose to the Grantor any information that would reveal the identity of assets comprising the trust estate or the types of investments in which the trust property is held, managed, or invested by the Trustee, and the Grantor disclaims any right to such information. The Grantor

shall make no effort to obtain information with respect to the holdings of the trust, including obtaining a copy of any trust tax return filed or any information relating thereto, except as otherwise specifically permitted by the terms of this instrument.

3. Trust Provisions.

3.1 Compositions of Trust Estate. The trust estate shall not contain any asset prohibited by law or regulation to be held by the Grantor.

3.2 Management of the Trust Estate by the Trustee.

(a) The Trustee shall exercise authority to manage, control, invest and dispose of the assets comprising the trust estate in his sole discretion, and shall not consult, solicit advice from, or notify the Grantor in the exercise of that authority.

(b) The Trustee shall promptly notify the Grantor and his "supervising ethics office" as defined in 2 U.S.C. Section 702(e)(3)(C) when the holdings of any particular asset transferred to the trust estate by the Grantor pursuant to paragraph 1 at the time this trust is established or hereafter are (i) disposed of, or (ii) the value of such holdings are less than $1,000.

(c) The Trustee shall provide no reports or accountings to the Grantor other than a report at the end of each calendar quarter which contains only the following information: (i) the total cash value of the assets comprising the trust estate; (ii) the net income or loss of the trust; and (iii) any information, including gain or loss from dispositions of trust assets, characterization of such gain or loss, and receipts or disbursements from the property held in trust during such period of accounting, to enable the Grantor to complete and file his individual income tax return as required by law; provided that such report shall not identify any of the assets comprising the trust estate.

(d) The Trustee or his designee shall prepare the trust tax return, and such return and any information relating thereto (other than the trust income summarized in appropriate categories necessary to complete the Grantor's tax return), shall not be disclosed to the Grantor.

(e) Except for communications which solely consist of requests by the Grantor for cash distributions of principal or income from the trust as provided in subparagraph 3.3, or other unspecified assets, there shall be no direct or indirect communication between the Trustee and the Grantor with respect to the trust unless such communication is in writing and unless it relates only (i) to the general financial interest and needs of the Grantor (including, but not limited to, an interest in maximizing income or long-term capital gain), (ii) to the notification of the Trustee of a law or regulation subsequently applicable to the Grantor, which prohibits the Grantor from holding an asset, which notification directs that the asset not be held by the trust, or (iii) to directions to the Trustee to sell all of an asset initially placed in the trust by the Grantor which in his determination may create a conflict of interest or the appearance thereof due to the subsequent assumption of duties by the Grantor.

(f) The Trustee shall file a copy of any such communication described in subparagraph 3.2(e) above which he initiates with the Grantor's "supervising ethics office" as defined in 2 U.S.C. Section 702(e)(3)(C) within five days of the date of the communication.

3.3 Distributions from Trust Estate.

(a) The Trustee shall hold, manage, invest, and reinvest the property placed in this trust, and shall pay over to the Grantor such amounts of principal and income as the Grantor may from time to time request. Any undistributed net income shall be added to the principal of this trust. Distributions of income or principal from the trust estate shall be made only in cash by the Trustee, and the Grantor shall have no power to compel the distribution in kind of assets comprising the trust estate during the term hereof. The Trustee shall be allowed a reasonable time to deliver any such amounts of principal or income as may be requested by the Grantor, in order to convert assets comprising the trust estate to cash.

(b) If the Grantor becomes incapacitated through illness, age, or other cause, as determined by the Trustee upon receipt of a verification in writing from any qualified physician that the Grantor is physically or mentally incapacitated, the Trustee shall be authorized to pay out or use such part or all of the income and principal of this trust as he may deem best in his discretion to provide for the proper support and maintenance of the Grantor, his wife, and family.

3.4 Termination. Unless earlier terminated during the lifetime of the Grantor as provided herein, this trust shall terminate upon the Grantor's death. At such time, the Trustee shall convey the then remaining assets held in trust to the Grantor's duly qualified executor under his will, to be administered and distributed as therein provided.

4. Powers of the Trustee. In the management, care, and distribution of this trust, the Trustee and any successor Trustee shall have the following powers, authority, and discretion, in addition to any and all powers granted by law to the Trustee, which may be exercised without order or report to any court:

(a) To sell, exchange, or otherwise dispose of any property at any time held or acquired hereunder at public or private sale, for cash or on terms, without advertisement, including the right to lease for any term notwithstanding the period of the trust, and to grant options, including an option for a period beyond the duration of the trust.

(b) To invest all monies in such stocks, bonds, securities, investment company or trust shares, common trust funds, mortgages, notes, choses in action, real estate, improvements thereon, and other property as the Trustee may deem best, without regard to any law now or hereafter in force limiting the investments of fiduciaries.

(c) To retain for investment any property or choses in action transferred to this trust.

(d) To vote in person or by proxy any corporate stock or other security and to agree to or take any other action in regard to any reorganization, merger, consolidation, liquidation, bankruptcy, or other procedure or proceeding affecting any stock, bond, note, or other security.

(e) To use real estate brokers, accountants, and other agents, if such employment be deemed necessary or desirable, and to pay reasonable compensation for their services.

(f) To renew any indebtedness, as well as to borrow money, and to secure the same by mortgaging, pledging, or conveying any property of the trust, including the power to borrow from the trust at a reasonable rate of interest.

(g) To register any stock, bond, or other security in the name of any nominee, without the addition of words indicating that such security is held in a fiduciary capacity; but accurate records shall be maintained showing that such security is a trust asset and the Trustee shall be responsible for the acts of such nominee.

(h) To do any and all other things, not in violation of any other terms of this instrument, which, in the judgment of the Trustee, are necessary or appropriate for the proper management, investment, and distribution of the assets of the trust in accordance with the provisions of this instrument.

5. Power to Revoke. The Grantor reserves the right at any time to revoke this trust by an instrument in writing signed by the Grantor and delivered to the Trustee during the lifetime of the Grantor. In the event of revocation, the Trustee shall transfer to the Grantor all of the then remaining trust property as the Grantor may direct in the instrument of revocation. The Trustee shall have a reasonable time in which to deliver the trust property subject to such revocation and to the extent the trust holds investments in any common trust fund, the Trustee shall have such time as may be reasonably required to convert such investments to cash as to the next monthly or quarterly date on which units and such common trust fund may be redeemed.

6. Resignation by Trustee, Successor Trustees. The Trustee may at any time resign upon 30 days' written notice provided to the Grantor, and upon such resignation the Grantor shall have the right to appoint a successor Trustee by written notice to the Trustee. Upon delivery by the Trustee of all of the trust property to the successor Trustee, or to the Grantor if he does not appoint a successor Trustee, and upon properly accounting for all property received and disbursed by him, the Trustee shall be fully discharged from all responsibility and liability with respect to any connection with the trust.

7. Judicial Accounting; Bond. The Trustee shall not be required to make or file any inventory, appraisal, account, or report to any court, or to give bond.

8. Trustee Compensation. Trustee shall receive for his services hereunder, such compensation as shall be applicable to trusts of this type at the time such services are rendered.

IN WITNESS WHEREOF, the parties hereunto executed this Trust Agreement the day and year first above written.

GRANTOR

TRUSTEE

By:______________________________

S32MWSjlh0524852

STATE OF MINNESOTA)
) ss
COUNTY OF Hennepin)

On this 18th day of June, 1985, before me, a notary public in and for said State and County, personally appeared David F. Durenberger, to me known to be the person described in and who executed the foregoing instrument as Grantor, and acknowledged that he executed the same as his free act and deed.

Susan K. Anderson
Notary Public

My Commission Expires:
11/20/85

SUSAN K. ANDERSON
NOTARY PUBLIC • MINNESOTA
HENNEPIN COUNTY
My Commission Expires Nov. 20, 1985

STATE OF MINNESOTA)
) ss
COUNTY OF HENNEPIN)

On this 18th day of June, 1985, before me, a notary public in and for said State and County, personally appeared Michael C. Mahoney, with whom I am personally acquainted (or proved to me on the basis of satisfactory evidence) and who upon oath, acknowledged himself to be the Trustee of the Revocable Trust, and that he as such Trustee, executed the foregoing instrument for the purpose therein contained, by signing the name of Michael C. Mahoney by himself as Trustee.

Susan K. Anderson
Notary Public

My Commission Expires:
11/20/85

SUSAN K. ANDERSON
NOTARY PUBLIC • MINNESOTA
HENNEPIN COUNTY
My Commission Expires Nov. 20, 1985

F15HSKA/MWS/MCMsak3

INFORMATION REGARDING THE TRUSTEE AND ASSETS OF A BLIND TRUST UNDER SECTION 102(e)(3) OF THE ETHICS IN GOVERNMENT ACT OF 1978

I certify the following is accurate and correct to my best information and belief:

1. The trustee(s) is (are) a financial institution, attorney, certified public accountant, broker, or investment adviser.

2. The trustee(s) and/or, in the case of any organization, any officer or employee involved in the control or management of the trust:

   (a) Is independent of and unassociated with any interested party so that the trustee cannot be controlled or influenced in the administration of the Trust by any interested party. ("Interested party" means a reporting individual, his or her spouse, and any dependent child if the reporting individual, spouse, or dependent child has a beneficial interest in the principal or income o a qualified blind trust.)

   (b) Is not or has not been an employee of any interested party, or any organization affiliated with any interested party and is not a partner, of o involved in any joint venture or other investmen with, any interested party.

   (c) Is not a relative of any interested party ("Relative" means an individual who is related t the reporting individual, as father, mother, son daughter, brother, sister, uncle, aunt, grea aunt, great uncle, first cousin, nephew, niece husband, wife, grandfather, grandmother, grandson granddaughter, father-in-law, mother-in-law son-in-law, daughter-in-law, brother-in-law sister-in-law, stepfather, stepmother, stepson stepdaughter, stepbrother, stepsister, hal brother, half sister, or who is the grandfather o grandmother of the spouse of the reporting individual, and the fiance or fiancee of the reportin individual.

3. The trust does not contain any asset with restriction on its transferability.

Signature Date: 6/18/85

S32MWSj1h0524854

CURTIN, MAHONEY & CAIRNS
A PROFESSIONAL ASSOCIATION
ATTORNEYS AT LAW

RICHARD T. CURTIN
MICHAEL C. MAHONEY
JOHN A. CAIRNS
SUSAN L. NEUMEYER
DOUGLAS J. CARNEY
DONNA E. HANBERY
DEANNE M. GRECO
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TELEPHONE (612) 333-5411

1920 N STREET N.W.
SUITE 420
WASHINGTON, D.C. 20036
TELECOPIER (202) 833-8344
TELEX 64 599
TELEPHONE (202) 887-0716

OF COUNSEL:
ALVIN H. GANDAL
ADMITTED IN D.C. AND OHIO

REPLY TO

February 10, 1986 Minneapolis

Mr. Wilson R. Abney
Senate Select Committee on Ethics
220 Senate Hart Building
Washington, DC 20510

DAVID F. DURENBERGER
OUR FILE NO. 01468-004

Dear Mr. Abney:

Enclosed please find a detailed value of assets for the Revocable Trust for the Management of Investment Property by and between David F. Durenberger and Michael C. Mahoney.

I believe that this is all of the information you need in connection with such Trust. If you need any additional information, please contact the undersigned.

Very truly yours,

Michael W. Schley

MICHAEL W. SCHLEY

Enclosures

cc: David F. Durenberger

SPECIAL
COUNSEL
HEARING
EX. 334

P15LSKAsak0210861

DAVID F. DURENBERGER
154 Russell Senate Office Building
Washington, DC 20515

February 5, 1986

Mr. Wilson R. Abney
Senate Select Committee on Ethics
220 Senate Hart Building
Washington, DC 20510

Ladies and Gentlemen:

Following is a detailed value of assets listed on Appendix A to the Revocable Trust for the Management of Investment Property by and between David F. Durenberger and Michael C, Mahoney:

1. Current Interest Money Market Portfolio:

   All interests in Money Market Portfolio at Piper, Jaffray & Hopwood Incorporated, Account No. 120252250-5, consisting of shares purchased and all income reinvested.

   Valuation: C

2. All interests of Grantor (approximately one-seventh interest) in:

   Dynamic Enterprises

   Valuation: C

3. All interests (approximately one-half interest) in:

   706-607 Partnership

   Valuation: D

Very truly yours,

DAVID F. DURENBERGER
United States Senate

APPENDIX A

1. Current Interest Money Market Portfolio:

   All interests in Money Market Portfolio at Piper, Jaffray & Hopwood Incorporated, Account No. 120252250-5, consisting of shares purchased and all income reinvested.

2. All interests of Grantor (approximately one-seventh interest) in:

   Dynamic Enterprises

3. All interests (approximately one-half interest) in:

   706-607 Partnership

F15HSKA/MWS/MCMsak3

WARREN B. RUDMAN NEW HAMPSHIRE CHAIRMAN
HOWELL HEFLIN ALABAMA VICE CHAIRMAN
JESSE HELMS NORTH CAROLINA
NANCY LANDON KASSEBAUM KANSAS
DAVID PRYOR ARKANSAS
RUSSELL B LONG LOUISIANA

BONNIE ST CLAIR PARKER STAFF DIRECTOR

United States Senate

SELECT COMMITTEE ON ETHICS

HART SENATE OFFICE BUILDING, ROOM 220
SECOND AND CONSTITUTION AVENUE, NE
WASHINGTON, DC 20510
TELEPHONE 224-2981

February 24, 1986

Mr. Michael W. Schley
Curtin, Mahoney & Cairns
4150 Multifoods Tower
Minneapolis City Tower
Minneapolis, Minnesota 55402

Dear Mr. Schley:

This acknowledges receipt of your letter of February 10, 1986, with its enclosures, concerning the qualified blind trust of Senator David F. Durenberger. After review, we find the trust to be a "Qualified Blind Trust" as defined in section 102(e)(3) of the Ethics in Government Act of 1978, as amended. This approval is conditioned upon administration of the trust in accord with the provisions of section 102(e)(3)(C) of the Act.

As you have provided this Committee with a copy of the executed trust agreement, a schedule of assets to be transferred to the trust, a statement of all parties that the trust will be administered in accordance with the Act, and a statement from Senator Durenberger as Grantor, that the trustee, Mr. Michael C. Mahoney, is qualified to act as trustee pursuant to section 102(e)(3)(A) of the Act, we will file those documents with the Secretary of the Senate within 30 days.

With best wishes,

Cordially,

Warren B. Rudman
Warren B. Rudman
Chairman

Howell Heflin
Vice Chairman

SPECIAL
COUNSEL
HEARING
EX. 336

COUNSEL
HEARING
EX. 338

CURTIN, MAHONEY & CAIRNS
A Professional Association
Attorneys at Law
4150 Multifoods Tower
Minneapolis City Center
Minneapolis, Minnesota 55402
(612) 333-5411

MEMORANDUM

TO: FILE

FROM: JEFFREY C. ROBBINS

DATE: NOVEMBER 12, 1986

RE: DAVID DURENBERGER--TRAVEL REGULATIONS
OUR FILE NO. 1468-015

FACTS

Senator Durenberger and Robert Scherer have been partners in a general partnership which holds two condominiums. When Durenberger travels to Minneapolis on Senate business, he has been staying in a partnership condominium and has been receiving a per diem lodging reimbursement amount from the Senate. At the request of Scherer, the partnership is to terminate and Durenberger will hold one of the condominium units in his own name.

ISSUE

Will the termination of the partnership affect Durenberger's ability to receive the per diem lodging reimbursement amount when he stays in Minneapolis at his condominium on official Senate business?

CONCLUSION

Nothing in the Senate Travel Regulations indicates that termination of the partnership will affect Durenberger's ability to receive the per diem lodging reimbursement amount.

DISCUSSION AND ANALYSIS

The Senate Travel Regulations currently in effect, as revised by the Committee on Rules and Administration effective December 8, 1980, provide that traveling expenses which will be reimbursed are confined to those expenses essential to the transaction of the official business while away from the official station or post of duty. According to the Rules, the official duty station of all Senate members is considered to be the metropolitan area of Washington, DC, except during adjournment sine die or the

adjournment period authorized in odd-numbered years by Public Law 91-510, Approved October 26, 1970. While the Senate is in session, therefore, Durenberger's travel to Minneapolis is deemed to be travel away from his official duty station and he is therefore entitled to reimbursement of his travel expenses. This analysis was confirmed by a blind telephone call to Dennis G. Doherty, Senior Auditor for the Committee on Rules and Administration.

Because Durenberger's travel will still be away from his official duty station after the partnership terminates, nothing in the Rules indicates that termination of the partnership will affect Durenberger's ability to receive the per diem lodging reimbursement amount.

Mailed w/check
for $7,350.00 #17981
8/27/87

January 1, 1987

ATTN: MR. PAUL OVERGAARD

Independent Service Company, Inc.
P.O. Box 171
North Highway 13
Albert Lea, MN 56007

SALE OF APARTMENT NUMBER 603, APARTMENT OWNERSHIP NUMBER 128, THE TOWER OF 1200 ON THE MALL

Ladies and Gentlemen:

This letter will set forth our understanding concerning the sale of the above-referenced condominium.

Durenberger-Scherer Partnership, a Minnesota general partnership, will agree to sell Apartment Number 603, Apartment Ownership Number 128, The Tower of 1200 on the Mall, legally described on Exhibit A attached hereto, for a purchase price of $52,500. The sale will take place as of January 1, 1987. The purchase price will be paid as follows:

Assumption of existing first mortgage	$35,154.34
Cash:	$7,350.00
Five-year promissory note:	$9,995.66

The sale of this condominium will be subject to a lease between Independent Service Company and the David F. Durenberger Volunteer Committee. Upon 72 hours notice, David F. Durenberger, his family or guests, may use the condominium. The rent payable will be equal to the per diem costs of all expenses incurred in owning the condominium, including, but not limited to, mortgage payment, association fees, real estate taxes, and insurance.

SPECIAL
COUNSEL
HEARING
EX. 351

A

If this letter accurately states our understanding, please indicate by signing below.

Very truly yours,

DURENBERGER-SCHERER PARTNERSHIP

By____________________________
David F. Durenberger
Its General Partner

Agreed to:

INDEPENDENT SERVICE COMPANY

By Paul Overgaard
Paul Overgaard
Its President

B

SINGLE PAYMENT, UNSECURED
PROMISSORY NOTE

Face Amount: $9,995.66 January 1, 1987

FOR VALUABLE CONSIDERATION RECEIVED, Independent Service Company, Inc., a Minnesota corporation, ("Maker") hereby promises to pay to Durenberger-Scherer Partnership, a Minnesota general partnership, ("Holder") or its order the sum of Nine Thousand Nine Hundred Ninety-Five and 66/100 ($9,995.66) Dollars in the following manner and upon the following terms and conditions:

1. Payment. The indebtedness represented by this Note shall be due and payable in a single payment December 31, 1992. Maker may prepay all or any portion of this indebtedness at any time without penalty. All payments shall be applied first to interest and the balance to principal.

2. Interest. Interest on the unpaid principal balance from time to time remaining shall be computed from and after the date of this Note. The interest rate shall be eight (8%) percent per annum.

3. Notice of Default--Grace Period. If Maker shall default by failing to perform the obligations imposed by this Note, then the Holder shall give notice to the Maker of the default and if the default is not cured within ten (10) days from and after the receipt of such notice, then the indebtedness represented by this Note shall become immediately due and payable. The Holder shall take no action against Maker and shall commence no proceedings for collection until the expiration of such notice.

4. Waiver. Maker waives demand, presentment, notice of nonpayment or dishonor, protest and notice of protest, and agrees that he shall continue to remain liable to pay the unpaid balance of the indebtedness evidenced by this Note as extended, renewed, or modified and notwithstanding any release or substitution of security on terms. Maker further agrees to pay all costs of collection, including reasonable attorneys' fees, in case any payment due hereunder shall not be made when due or other default occur.

5. Miscellaneous.

a. Notices. All notices required pursuant to the terms of this Note shall be in writing and either delivered personally or sent by certified or registered mail. If sent by mail, notice shall be deemed given when deposited in the

U.S. Mail, properly addressed and with postage prepaid. Unless changed by written notice, the following addresses shall be used:

Independent Service Company,
Inc.
P.O. Box 171
North Highway 13
Albert Lea, MN 56007

Durenberger-Scherer
Partnership
____
____
____

In all cases, for any such notice to be effective, a copy shall be sent to:

Michael C. Mahoney
Curtin, Mahoney & Cairns
A Professional Association
4150 Multifoods Tower
Minneapolis, MN 55402

b. Governing Law. This Note shall be construed and interpreted in accordance with the laws of the State of Minnesota.

c. Binding Effect. Except as herein otherwise provided to the contrary, this Note shall be binding upon, and inure to the benefit of, the Parties and their respective heirs, executors, administrators, successors and assigns.

IN WITNESS WHEREOF, the undersigned has set his hand.

INDEPENDENT SERVICE COMPANY,
INC.

By Paul Overgaard
Paul Overgaard

Form PE-20 [illegible]

Certificate of Real Estate Value

Buyer's Last Name, First, Middle Initial
Independent Service Company, Inc.

Present Address
P. O. Box 171, North Highway 13
Albert Lea, MN 56007

Seller's Last Name, First, Middle Initial
Durenberger-Scherer Partnership

Address

Obsolete

Street Address or Rural Route of Property Purchased
Unit 603, 1225 LaSalle
The Tower of 1200 On The Mall

City or Township
Minneapolis

County
Hennepin

Legal Description of Property Purchased (Fill in lot number, block number and plat name, or attach 3 copies of the legal description)
See Exhibit A attached hereto

Type of Acquisition (check all boxes which apply)

☐ You and seller are relatives or related businesses
☐ Property is a gift or inheritance
☐ You received property in a trade
☐ You are a religious or charitable organization
☐ You are a unit of government
☐ You condemned or foreclosed on the property
☐ Your name added to or co-owner's name removed from deed (not a sale)
☐ You purchased partial interest only
☐ Date purchase agreement signed is over two years ago

If you checked any box above, skip the rest of this form, sign it and fill out schedule B

Type of Property Transferred (check all boxes which apply)

☐ Land Only
☐ Land and Buildings
☐ Construction of a new building completed after January 1 of year of sale

Planned Use of Property (check one box)

☒ Residential (single, duplex, triplex) condominium
☐ Agricultural
☐ Apartment (four or more units)
☐ Commercial-Industrial
☐ Cabin or Recreational
☐ Other Use (describe below)

Financial Arrangements

1 Total Purchase Price $52,500.00
2 Total Amount of Personal Property (from schedule A on back of this sheet)
3 Date Seller Signed Purchase Agreement January 1, 1987
4 Down Payment
5 Points or Prepaid Interest Paid by Seller
6 Points or Prepaid Interest Paid by Buyer

Describe each mortgage and contract for deed used to purchase this property

Check if Assumed From Seller	Mortgage or Contract for Deed Amount At Purchase	Monthly Payment for Principal and Interest	Interest Rate (In Effect Now)	Total Number Of Payments	Date Of Any Lump Sum (Balloon) Payments
☐ 7					
☐ 8					
☐ 9					

10 If the interest rate of a mortgage or contract for deed is not a variable market rate now and is scheduled to change to a different rate on a fixed date, fill in its line number from above, the month and year of the change, and the rate it will change to:

11 If the dollar amount of the monthly payment is scheduled to change (not as a result of a change in the interest rate), fill in its line number from above, the date of change, and the amount it will change to (or attach payment schedule):

Fill out schedule B on the back of this sheet to determine the amount of your deed stamp tax

I declare that the information filled in on this form is true, correct and complete to the best of my knowledge and belief.

Buyer's Signature INDEPENDENT SERVICE Company Inc.
Paul P. Overgaard, Pres.

Phone Number 507-373-8216

Date

Plat — Parcel

Dept of Revenue Copy

E

Form No. 2280

GOVERNMENT BUSINESS SYSTEMS MPLS

Affidavit of Purchaser of Registered Land (Corporation)

State of Minnesota,
County of HENNEPIN } ss.

Paul Overgaard, being first duly sworn says that he is the President of ~~the~~ Independent Service Company, Inc.

a corporation organized and existing under the laws of the State of Minnesota having its principal place of business at P. O. Box 171, N. Highway 13, Albert Lea, MN 56007.

That said corporation is the purchaser of registered land, situated in Hennepin County, Minnesota, from the holder of certificate No. 649025.

That pursuant to the articles and by-laws of said corporation, the officers authorized to execute deeds are the President

of said corporation, and that said corporation has ~~a~~ corporate seal,

Paul Overgaard
Paul Overgaard

Subscribed and sworn to before me this ______
day of August, 1987

____
______________ County, Minnesota

F

No delinquent taxes and transfer entered. Certificate of Real Estate Value ( ) filed ( ) not required
Certificate of Real Estate Value No. ________
________, 19 ____

____
County Auditor

by ________
Deputy

TATE DEED TAX DUE HEREON: $ ________

ate January 1, 19 87

(reserved for recording data)

OR VALUABLE CONSIDERATION, Durenberger-Scherer Partnership, a general partnership under the laws of e State of Minnesota, Grantor, hereby conveys and quitclaims to Independent Service ompany, Inc., Grantee, corporation under the laws of the State of Minnesota, real property in Hennepin County, Minnesota, described as follows:

See Exhibit A attached hereto and incorporated herein by reference

(if more space is needed, continue on back)

together with all hereditaments and appurtenances belonging thereto.

Durenberger-Scherer Partnership
By ________
Its General Partner
By ________
Its ________

STATE OF MINNESOTA
COUNTY OF HENNEPIN } ss.

The foregoing was acknowledged before me this ______ day of August, 19 87, by David F. Durenberger and ________, the General Partner and ________, of Durenberger-Scherer Partnership, a general partnership under the laws of the State of Minnesota, on behalf of the partnership.

NOTARIAL STAMP OR SEAL (OR OTHER TITLE OR RANK)

____
SIGNATURE OF PERSON TAKING ACKNOWLEDGMENT

Tax Statements for the real property described in this instrument should be sent to (include name and address of Grantee):

Independent Service Company, Inc.
P. O. Box 171
North Highway 13
Albert Lea, MN 56007

THIS INSTRUMENT WAS DRAFTED BY (NAME AND ADDRESS):

C rtin, Mahoney & Cairns, P.A.
30 Multifoods Tower
nneapolis City Center
nneapolis, MN 55402

G

Exhibit A

Apartment No. 603 and .44 % of undivided interest in the common areas and facilities, Apartment Ownership No. 128, The Tower of 1200 On The Mall, 1225 LaSalle Avenue, Minneapolis, Minnesota located upon the following described land:

Tract A, Registered Land Survey No. 1487,

according to the Declaration of Apartment Ownership and attached By-Laws filed as Document No. 1321937 on the 21st day of March, 1979, and the Floor Plans filed as Document No. 1321938 on the 21st day of March, 1979, files of the Registrar of Titles;

each apartment is intended for residential use subject to the provisions as more fully set forth in said Declaration and By-Laws;

subject to the provisions of Minnesota condominium act, Minnesota Statutes 1976, Chapter 515 and acts amendatory thereof;

subject to restrictions, rights and easements granted over common areas and facilities as contained in the Declaration Document No. 1321937.

H

Exhibit A

Apartment No. 603 and .44 % of undivided interest in the common areas and facilities, Apartment Ownership No. 128, The Tower of 1200 On The Mall, 1225 LaSalle Avenue, Minneapolis, Minnesota located upon the following described land:

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each apartment is intended for residential use subject to the provisions as more fully set forth in said Declaration and By-Laws;

subject to the provisions of Minnesota condominium act, Minnesota Statutes 1976, Chapter 515 and acts amendatory thereof;

subject to restrictions, rights and easements granted over common areas and facilities as contained in the Declaration Document No. 1321937.

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each apartment is intended for residential use subject to the provisions as more fully set forth in said Declaration and By-Laws;

subject to the provisions of Minnesota condominium act, Minnesota Statutes 1976, Chapter 515 and acts amendatory thereof;

subject to restrictions, rights and easements granted over common areas and facilities as contained in the Declaration Document No. 1321937.

Minnesota Multi-Housing Association
Standard Form Apartment Lease
7-20-78 Copyright Minnesota Multi-Housing Assoc. 1978

MULTI HOUSING

The terms in this Lease are as entered below

RESIDENT (List all persons who will occupy the Apartment)
David F. Durenberger Volunteer Committee, David F. Durenberger, his family and guests

MANAGEMENT (Enter Company Name if applicable)
Independent Service Company, Inc. (Owner)

STREET ADDRESS OF APARTMENT The Tower of 1200 On The Mall, 1225 LaSalle

APARTMENT NO. 603 **DURATION OF LEASE** * (enter number of months or "month-to-month")

STARTING DATE OF LEASE January 1, 1987 **ENDING DATE OF LEASE** (if appropriate) *

NOTICE PERIOD (The Notice Period is one full month unless indicated otherwise herein) *

MONTHLY APARTMENT RENT $ *

OTHER MONTHLY RENT CHARGES (if any) $ *

TOTAL MONTHLY RENT $ * **SERVICE CHARGE** (if any) $ *

UTILITIES INCLUDED IN RENT. ☐ Heat ☐ Hot and Cold Water ☐ Other, such as electricity or cooking gas as applicable
*

UTILITIES PAID SEPARATELY BY RESIDENT ☐ Electricity ☐ Telephone ☐ Other

(The following is required by Minnesota Statutes Section 504.22)

The person authorized to manage these premises is Paul Overgaard of Independent Service Company, Inc.

Whose address is P. O. Box 171, North Highway 13, Albert Lea, MN 56007

An owner of the premises or an agent authorized to accept service of process and receive and give receipts for notices and demands is
same

Whose address is same

Additional Agreements (if any): * This Lease Agreement is entered into to give David F. Durenberger Volunteer Committee, David F. Durenberger, his family and guests, the right, upon seventy-two (72) hours' notice, to use the Apartment. The rent payable will be equal to the per diem costs of all expenses incurred in owning and operating the Apartment, including but not limited to, the mortgage payment, property taxes, insurance, association fees, utilities, etc.

Management (acting as agent for the owner of the premises) and Resident agree to the terms of this lease as written both above and below these signatures, and on any attachments that may be made part of this lease.

MANAGEMENT
Independent Service Company, Inc.
By Paul P Overgaard
Paul Overgaard, Its President
Date signed 1/1/87

David F. Durenberger Volunteer Committee
(Resident)
(Resident)
By
(Resident)
Date signed

TERMS OF THIS LEASE:

1. **OCCUPANCY AND USE:** No person other than those listed above as Residents may occupy the Apartment without the written approval of Management. The Apartment and Utilities may be used only for ordinary residential purposes.

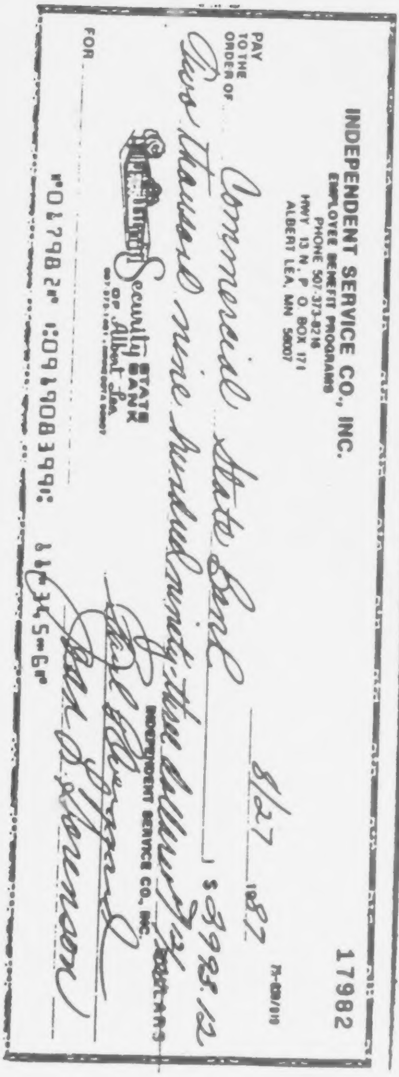
2. **RENT:** Resident agrees to pay Management, at the place or in the method designated by Management, monthly Rent in full on or before the first day of every month in advance, during the Duration of this Lease and any extensions or renewals of this Lease.

3. **SERVICE CHARGE AND RETURNED CHECK FEE:** Resident agrees to pay as additional rent the Service Charge stated above (if any) with the rent for each late installment of rent when the rent has not been paid by the 5th day of any month. Resident also agrees to pay a fee of $10.00 for each check returned because it was not paid by Resident's bank for any reason.

4. **ALL RESIDENTS RESPONSIBLE FOR ALL DEBTS:** Residents are responsible for paying the Rent and any other money due to Management under this Lease or as a result of any breach of this Lease, and each and every Resident is individually responsible for paying the full amount of such debts, not just a proportionate share.

5. **MANAGEMENT PROMISES:** 1) That the premises and all common areas are fit for use as a residential premises; 2) to keep the premises in reasonable repair and make necessary repairs within a reasonable time after written notice by Resident except when a disrepair has been caused by the willful or negligent conduct of the Resident or his guests; 3) to maintain the premises in compliance with applicable health and safety codes except when a violation of the health and safety codes has been caused by the willful or negligent conduct of the Resident or his guests; and 4) to maintain the common areas in a state of repair and cleanliness.

K



INDEPENDENT SERVICE CO., INC.
EMPLOYEE BENEFIT PROGRAMS
PHONE 507-373-8216
HWY 13 N., P. O. BOX 171
ALBERT LEA, MN 56007

17982

75-839/919

8/27 1987

PAY TO THE ORDER OF Commercial State Bank $2993.12

Two thousand nine hundred ninety-three dollars & 12/100 DOLLARS

Security STATE BANK of Albert Lea

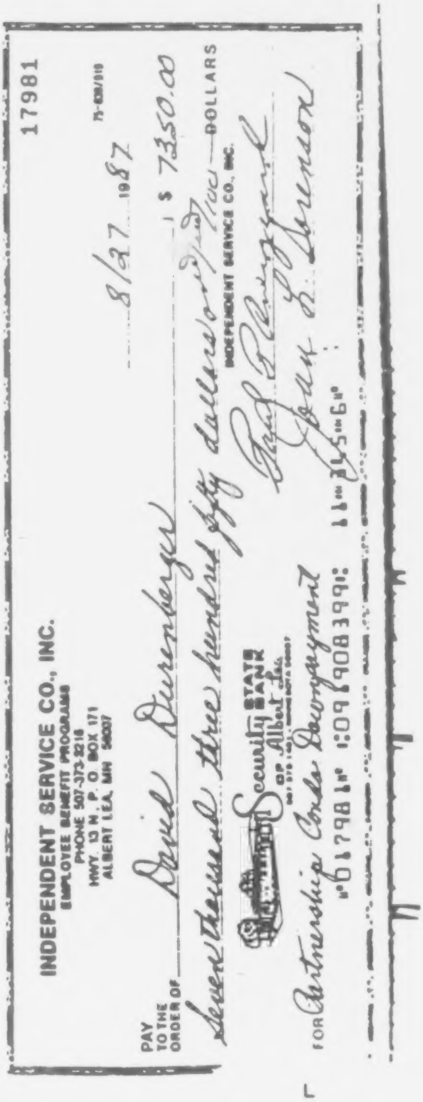
INDEPENDENT SERVICE CO., INC.

Paul P. Overgaard

Joan L. Sorenson

FOR

⑈017982⑈ ⑆091908399⑆ 11⑈345⑈6⑈



INDEPENDENT SERVICE CO., INC.
EMPLOYEE BENEFIT PROGRAMS
PHONE 507-373-8216
HWY. 13 N., P. O. BOX 171
ALBERT LEA, MN 56007

17981

75-839/919

8/27 1987

PAY TO THE ORDER OF David Durenberger $7350.00

Seven thousand three hundred fifty dollars and no/100 DOLLARS

Security STATE BANK of Albert Lea

INDEPENDENT SERVICE CO., INC.

Paul P. Overgaard

Joan L. Sorenson

FOR Partnership Condo Downpayment

⑈017981⑈ ⑆091908399⑆ 11⑈345⑈6⑈

April 1, 1987

ATTN: MR. PAUL OVERGAARD

Independent Service Company, Inc.
P.O. Box 171
North Highway 13
Albert Lea, MN 56007

SALE OF APARTMENT NUMBER 603, APARTMENT OWNERSHIP NUMBER 128,
THE TOWER OF 1200 ON THE MALL

Ladies and Gentlemen:

This letter will set forth our understanding concerning the sale of the above-referenced condominium.

Durenberger Blind Trust, a trust governed by the laws of the State of Minnesota, will agree to sell Apartment Number 603, Apartment Ownership Number 128, The Tower of 1200 on the Mall, legally described on Exhibit A attached hereto, for a purchase price of $52,804.30. The sale will take place as of April 1, 1987. The purchase price will be paid as follows:

Subject to existing first mortgage	$35,154.34
Cash:	$7,350.00
Five-year promissory note:	$10,299.96

The sale of this condominium will be subject to a lease between Independent Service Company and David F. Durenberger. Upon 72 hours notice, David F. Durenberger, his family or guests, may use the condominium. The rent payable will be equal to the per diem costs of all expenses incurred in owning the condominium, including, but not limited to, mortgage payment, association fees, real estate taxes, and insurance. At the end of each month during the term of the lease, the total cost of owning and operating the apartment shall be calculated by Independent Service Company for said month and said total cost shall be promptly paid by David F. Durenberger, irrespective of the number of days in which Mr. Durenberger actually uses the apartment during said month.

SPECIAL
COUNSEL
HEARING
EX. 398

If this letter accurately states our understanding, please indicate by signing below.

Very truly yours,

DURENBERGER BLIND TRUST

By
Michael C. Mahoney
Its Trustee

Agreed to:

INDEPENDENT SERVICE COMPANY

By Paul Overgaard
Paul Overgaard
Its President

CURTIN, MAHONEY & CAIRNS
A PROFESSIONAL ASSOCIATION
ATTORNEYS AT LAW

RICHARD T. CURTIN
MICHAEL C. MAHONEY
JOHN A. CAIRNS
SUSAN L. NEUMEYER
DOUGLAS J. CARNEY
DONNA E. HANBERY
WRIGHT S. WALLING
MICHAEL W. SCHLEY
JEFFREY C. ROBBINS
KENNETH COREY-EDSTROM
DAVID J. STEINGART
PAUL G. GUTTERMAN
RANDY L. DECKER
JODY O. DESMIDT

4130 MULTIFOODS TOWER
MINNEAPOLIS CITY CENTER
MINNEAPOLIS, MINNESOTA 55402
TELECOPIER (612) 339-6862
TELEX 29163
TELEPHONE (612) 333-9411

SECOND FLOOR
818 CONNECTICUT AVENUE N.W.
WASHINGTON, D.C. 20036
TELECOPIER (202) 296-8709
TELEPHONE (202) 887-0716

OF COUNSEL
EDWARD C. ANDERSON
ALVIN H. GANDAL*
*ADMITTED IN D.C. AND OHIO

REPLY TO
Minneapolis

August 12, 1987

8/14/87

Mr. Paul Overgaard
Independent Service Company
P.O. Box 171
North Highway 13
Albert Lea, MN 56007

Dear Paul:

Enclosed please find information regarding your unit located at 1225 LaSalle Avenue, Minneapolis.

Should you have any questions please contact the undersigned at the above-listed number.

Very truly yours,

Tamara K. Hardy
Tamara K. Hardy
Assistant to Michael C. Mahoney

Enclosures

Commercial State Bank

F5ETKHpaj0812871

SPECIAL
COUNSEL
HEARING
EX. 348

United States Senate

MEMORANDUM

12/15

Senator -

The bill from Joan at Overgaard's office for the condo came today.

I have revouchered now for all the days from April - Oct. 1987.

I will be getting Nov. & on done shortly.

Heidi

[redacted]

[redacted]

Senator

001 [illegible]

007 [illegible]

Total of amounts being vouchered

[redacted]

SPECIAL
COUNSEL
HEARING
EX. 365

Paul P. Overgaard, President

SERVICE COMPANY
lbert Lea, MN 56007 (507) 373-8216

Copies of
bills sent

TO: Senator David Durenberger
Att: Heide

FROM: INDEPENDENT SERVICE COMPANY, INC.

RE: LEASE OF CONDOMINIUM
1200 LASALLE, MINNEAPOLIS, MN.

MONTH OF April 1987

DATES: 10, 11, 12, 14, 15, 16, 17, 24, 25

RATE OF 85.00 FOR 9 DAYS

AMOUNT DUE 765.00

PLEASE REMIT TO INDEPENDENT SERVICE COMPANY, INC., P. O. BOX 171,
ALBERT LEA, MN 56007

THANK YOU.

If you have any questions, please contact Joan L. Sorenson at the above address.

RADA
MEMBER

Paul P Overgaard, President

INDEPENDENT SERVICE COMPANY
Hwy. 13 North P.O. Box 171 Albert Lea, MN 56007 (507) 373-8216

BILLING

TO: Senator David Durenberger
Att: Heidi

FROM: INDEPENDENT SERVICE COMPANY, INC.

RE: LEASE OF CONDOMINIUM
1200 LASALLE, MINNEAPOLIS, MN.

MONTH OF May, 1987

DATES: 1, 2, 3, 5, 9, 10, 11, ⑬ 15, 16,
25, 26

RATE OF 85.00 FOR 12 DAYS

AMOUNT DUE 1,020.00

PLEASE REMIT TO INDEPENDENT SERVICE COMPANY, INC., P. O. BOX 171,
ALBERT LEA, MN 56007

THANK YOU.

If you have any questions, please contact Joan L. Sorenson at the above address.

AADA
MEMBER

Paul P. Overgaard, President

ISC INDEPENDENT SERVICE COMPANY
Hwy. 13 North P.O. Box 171 Albert Lea, MN 56007 (507) 373-8216

BILLING

TO: Senator David Durenberger
Att: Heidi

FROM: INDEPENDENT SERVICE COMPANY, INC.

RE: LEASE OF CONDOMINIUM
1200 LASALLE, MINNEAPOLIS, MN.

MONTH OF June 1987

DATES: 5, 6, ~~7~~, 13, 14, 15, 27, 28, 29

RATE OF 85.00 FOR 8 DAYS

AMOUNT DUE ~~$ 715.00~~ $680.00

PLEASE REMIT TO INDEPENDENT SERVICE COMPANY, INC., P. O. BOX 171,
ALBERT LEA, MN 56007

THANK YOU.

If you have any questions, please contact Joan L. Sorenson at the above address.

AADA
MEMBER

Paul P. Overgaard, President

INDEPENDENT SERVICE COMPANY
Hwy. 13 North P.O. Box 171 Albert Lea, MN 56007 (507) 373-8216

BILLING

TO: Senator David Durenberger
Att: Heide

FROM: INDEPENDENT SERVICE COMPANY, INC.

RE: LEASE OF CONDOMINIUM
1200 LASALLE, MINNEAPOLIS, MN.

MONTH OF July 1987

DATES: 2, 3, 11, 12, 16, 17, 18, 19

RATE OF 85.00 FOR 8 DAYS

AMOUNT DUE $ 680.00

PLEASE REMIT TO INDEPENDENT SERVICE COMPANY, INC., P. O. BOX 171,
ALBERT LEA, MN 56007

THANK YOU.

If you have any questions, please contact Joan L. Sorenson at the above address.

AADA
MEMBER

Paul P. Overgaard, President

INDEPENDENT SERVICE COMPANY
Hwy 13 North P.O. Box 171 Albert Lea, MN 56007 (507) 373-8216

BILLING

TO: Senator David Durenberger
Att: Heidi

FROM: INDEPENDENT SERVICE COMPANY, INC.

RE: LEASE OF CONDOMINIUM
1200 LASALLE, MINNEAPOLIS, MN.

MONTH OF August 1987

DATES: 8, 15, 18, 19, 22, 23, 26, 27,
28, 29, 30, 31

RATE OF 85.00 FOR 12 DAYS

AMOUNT DUE 1020.00

PLEASE REMIT TO INDEPENDENT SERVICE COMPANY, INC., P. O. BOX 171,
ALBERT LEA, MN 56007

THANK YOU.

If you have any questions, please contact Joan L. Sorenson at the above address.

Paul P. Overgaard, President

INDEPENDENT SERVICE COMPANY
Hwy. 13 North P.O. Box 171 Albert Lea, MN 56007 (507) 373-8216

BILLING

TO: Senator David Durenberger
Att: Heidi

FROM: INDEPENDENT SERVICE COMPANY, INC.

RE: LEASE OF CONDOMINIUM
1200 LASALLE, MINNEBPOLIS, MN.

MONTH OF September '87

DATES: 1, 2, 3, 4, 5, 6, 7, 18, 19, 20, 26

RATE OF 85.00 FOR 11 DAYS

AMOUNT DUE 935.00

PLEASE REMIT TO INDEPENDENT SERVICE COMPANY, INC., P. O. BOX 171,
ALBERT LEA, MN 56007

THANK YOU.

If you have any questions, please contact Joan L. Sorenson at the above address.

RADA
MEMBER

Paul P. Overgaard, President

INDEPENDENT SERVICE COMPANY
Hwy. 13 North P.O. Box 171 Albert Lea, MN 56007 (507) 373-8216

BILLING

TO: Senator David Durenberger
Att: Heidi

FROM: INDEPENDENT SERVICE COMPANY, INC.

RE: LEASE OF CONDOMINIUM
1200 LASALLE, MINNEAPOLIS, MN.

MONTH OF October '87

DATES: 10, 11, 16, 17, 18, 19, 23, 24, 25

RATE OF 85.00 FOR 9 DAYS

AMOUNT DUE 765.00

PLEASE REMIT TO INDEPENDENT SERVICE COMPANY, INC., P. O. BOX 171,
ALBERT LEA, MN 56007

THANK YOU.

If you have any questions, please contact Joan L. Sorenson at the above address.

RADA
MEMBER

ISC INDEPENDENT SERVICE COMPANY
Hwy. 13 North P.O. Box 171 Albert Lea, MN 56007 (507) 373-8216

November 5, 1987

Mr. Doug Kelly
Administrative Assistant to
Senator David Durenberger
375 Russell Senate Office Bldg.
Washington, D.C. 20510

Dear Doug:

Things are really going from bad to worse with regard to the Condo. Much remains to be done regarding the sale; no accounting of per diem due has been forthcoming; association dues are three or more months in arrears and we have been advised that the association has first right of refusal on any sales contract.

I'm really trying to get this together. Independent Service Company has paid out over $10,000.00 to Dave and to the bank and so far no income.

The sale was to be done effective January 1st and now I find out payments were made to the partnership at least thru March.

Do you have any suggestions on how I can help resolve this whole problem?

Sincerely,

Paul

PAUL P. OVERGAARD

PPO/egb

cc: Mike Mahoney
Kitty Gamble

RADA
MEMBER

SPECIAL
COUNSEL
HEARING
EX. 354

NOTICE OF HENNEPIN COUNTY UNPAID PROPERTY TAXES 10/27/87

PROPERTY ID NUMBER
27-029-24 24 0202 01
1225 LASALLE AVE

603 1987	UNPAID TAX	1,803.04
12%	1ST HALF PENALTY	108.18
4%	2ND HALF PENALTY	36.06
IF PAID BY NOV. 15, 1987	AMOUNT DUE	1,947.28

DURENBERGER-SCHERER PRTNSHIP
C/O JEAN STOW
5649 INTERLACHEN CIR
EDINA MN 55436

PLEASE RETURN THIS FORM WITH YOUR PAYMENT
MAKE CHECK PAYABLE TO: HENNEPIN COUNTY TREASURER
FOR ANY QUESTIONS CALL: 348-3011

This is the latest —

Paul P. Overgaard, President

ISC **INDEPENDENT SERVICE COMPANY**
Hwy. 13 North P.O. Box 171 Albert Lea, MN 56007 (507) 373-8216

February 3, 1988

Mr. Michael C. Mahoney
Curtin, Mahoney & Cairns
4150 Multifoods Tower
Minneapolis City Center
Minneapolis, MN 55402

RE: Condo Transaction

Dear Mike:

I know everyone is interested in putting the Condo sale "to bed". I had my auditor do some work to come up with adjusted numbers to recognize various transactions that took place between January 1, 1987 and April 1, 1987. Those numbers are enclosed.

The results are that the note is slightly larger (due to some payments made by Durenberger for the April-June period).

If you will prepare a new note for $10,299.96 dated April 1, 1987; redo the contract for deed to reflect an April 1st purchase; get condo clearance for the sale and return my note in the amount of $9,995.66. I think everything will be completed.

Thanks.

Sincerely,

PAUL P. OVERGAARD

PPO/egb

Enc.

Sent copy of '88 Tax statement
reflecting no change of ownership -

SPECIAL
COUNSEL
HEARING
EX. 371

Purchase of Louis's
Independent Service Co.
April 1, 1987

Purchase price			5250000	
Cash (Check # 17981 3/27/87)				735000
Mortgage payable (Bal. per amort sch. 3/18/87)				3500778
Accrued interest 3/18/87 - 3/31/87				10399
Real estate taxes 3/12 x 1803.04				45076
166.73 166.73 183.24 Eberhart dues April, May, June			51570	
Mortgage payments April and May			59504	
Miscellaneous (see below)				46798
Utilities	NWG	NSP		
April	2626	790 }	6973	
May	2626	931 }		
Note				1029996
			5368047	536804

Bank late charge	5950
Eberhardt interest	6712
[illegible] Co. interest & penalty	21636
Eberhart penalty	12500
	46798

B

COUNSEL
HEARING
EX. 373

A

[illegible]
RPD gave original
to Richard Davies

CURTIN, MAHONEY, CAIRNS & WALLING
A PROFESSIONAL ASSOCIATION
ATTORNEYS AT LAW

RICHARD T. CURTIN
MICHAEL C. MAHONEY
JOHN A. CAIRNS
WRIGHT S. WALLING
SUSAN L. NEUMEYER
DOUGLAS J. CARNEY
DONNA E. HANBERY
MICHAEL W. SCHLEY
JEFFREY C. ROBBINS
NANCY ZALUSKY BERG
KENNETH COREY-EDSTROM
DAVID J. STEINGART
STEVEN J. DZURAK
RANDY L. DECKER
JODY O. DESMIDT

1150 MULTIFOODS TOWER
MINNEAPOLIS CITY CENTER
MINNEAPOLIS, MINNESOTA 55402
TELECOPIER (612) 339-6862
TELEX 291163
TELEPHONE (612) 333-3411

SECOND FLOOR
818 CONNECTICUT AVENUE N.W.
WASHINGTON, D.C. 20006
TELECOPIER (202) 296-8709
TELEPHONE (202) 887-0716

OF COUNSEL
EDWARD C. ANDERSON
PAUL G. GUTTERMAN
JOHN G. HORNER
ALVIN H. GANDAL*
*ADMITTED IN D.C. AND OHIO

REPLY TO
Minneapolis

February 24, 1988

Paul Overgaard
Independent Service Company, Inc.
P.O. Box 171
North Highway 13
Albert Lea, MN 56007

DURENBERGER BLIND TRUST
OUR FILE NO. 01468-001

Dear Mr. Overgaard:

Enclosed please find the following documents:

1. Certificate of Real Estate Value which reflects the change in the purchase price;

2. The residential lease reflecting your agreement with David F. Durenberger, his family and guests;

3. The promissory note in the amount of $10,299.96 (your original promissory note in the amount of $9995.95 has been marked cancelled and is also enclosed);

4. Agreement regarding the sale of the condominium by and between the Durenberger Blind Trust and Independent Service Company, Inc., which also reflects the new promissory note amount; and

5. Copy of the Quit Claim Deed between Durenberger Blind Trust and Independent Service Company, Inc.

Two copies of items 1-4 have been enclosed. One set has been marked where you signature is required. The other set is for your records. We are in the process of obtaining the first right of refusal from the condominium association.

Should you have any questions, please contact the undersigned.

Very truly yours,

Michael C. Mahoney/TKN

MICHAEL C. MAHONEY

cc Doug Kelly
   Kitty Gamble
   Jodi Mathison

Enclosures

B

April 1, 1987

ATTN: MR. PAUL OVERGAARD

Independent Service Company, Inc.
P.O. Box 171
North Highway 13
Albert Lea, MN 56007

SALE OF APARTMENT NUMBER 603, APARTMENT OWNERSHIP NUMBER 128, THE TOWER OF 1200 ON THE MALL

Ladies and Gentlemen:

This letter will set forth our understanding concerning the sale of the above-referenced condominium.

Durenberger Blind Trust, a trust governed by the laws of the State of Minnesota, will agree to sell Apartment Number 603, Apartment Ownership Number 128, The Tower of 1200 on the Mall, legally described on Exhibit A attached hereto, for a purchase price of $52,804.30. The sale will take place as of April 1, 1987. The purchase price will be paid as follows:

Assumption of existing first mortgage	$35,154.34
Cash:	$7,350.00
Five-year promissory note:	$10,299.96

The sale of this condominium will be subject to a lease between Independent Service Company and David F. Durenberger. Upon 72 hours notice, David F. Durenberger, his family or guests, may use the condominium. The rent payable will be equal to the per diem costs of all expenses incurred in owning the condominium, including, but not limited to, mortgage payment, association fees, real estate taxes, and insurance.

C

If this letter accurately states our understanding, please indicate by signing below.

Very truly yours,

DURENBERGER BLIND TRUST

By______________________________
Michael C. Mahoney
Its Trustee

Agreed to:

INDEPENDENT SERVICE COMPANY

By Paul Overgaard
Paul Overgaard
Its President

copy of letter signed 3/1/88

Exhibit A

Apartment No. 603 and .44 % of undivided interest in the common areas and facilities, Apartment Ownership No. 128, The Tower of 1200 On The Mall, 1225 LaSalle Avenue, Minneapolis, Minnesota located upon the following described land:

Tract A, Registered Land Survey No. 1487,

according to the Declaration of Apartment Ownership and attached By-Laws filed as Document No. 1321937 on the 21st day of March, 1979, and the Floor Plans filed as Document No. 1321938 on the 21st day of March, 1979, files of the Registrar of Titles;

each apartment is intended for residential use subject to the provisions as more fully set forth in said Declaration and By-Laws;

subject to the provisions of Minnesota condominium act, Minnesota Statutes 1976, Chapter 515 and acts amendatory thereof;

subject to restrictions, rights and easements granted over common areas and facilities as contained in the Declaration Document No. 1321937.

E

Minnesota Multi Housing Association
Standard Form Residential Lease
Copyright © 1983, Minnesota Multi Housing Association

RESIDENTIAL LEASE

THE MINNESOTA ATTORNEY GENERAL'S OFFICE HAS CERTIFIED THAT THIS LEASE COMPLIES WITH THE MINNESOTA PLAIN LANGUAGE CONTRACT ACT

(Minnesota Statutes, Sections 325G.29-325G.36). Certification of a contract by the Attorney General under the plain language contract act is not otherwise an approval of the contract's legality or legal effect

minnesota MULTI HOUSING association

RESIDENT*: (List all persons who will live in the Apartment)
David F. Durenberger, his family and guests

MANAGEMENT: (Enter company name if applicable) Independent Service Company, Inc. (Owner)

STREET ADDRESS OF PREMISES ("Apartment") The Tower of 1200 on the Mall, 1225 LaSalle

APARTMENT NO. 603 **DURATION OF LEASE** * (enter number of months or month-to-month)

STARTING DATE OF LEASE April 1, 1987 **DATE THIS LEASE ENDS** (if appropriate) *

NOTICE PERIOD (The NOTICE PERIOD is one full month unless this Lease states a different notice period) *

MONTHLY APARTMENT RENT $ $85* **SERVICE CHARGE $** *

OTHER MONTHLY RENT CHARGES (e.g., garage) $

TOTAL MONTHLY RENT $ * **SECURITY DEPOSIT $** *

UTILITIES INCLUDED IN RENT: ☐ Heat ☐ Hot and Cold Water ☐ Other *

UTILITIES PAID BY RESIDENT: ☐ Electricity ☐ Telephone ☐ Other *

(The following is required by Minnesota Statutes, Section 504.22)

Authorized Manager of Apartment Paul Overgaard of Independent Service Company, Inc.

Address P.O. Box 171, North Highway 13, Albert Lea, MN 56007

An owner of the premises or an agent authorized to accept service of process and receive and give receipts for notices and demands is
Same

Address Same

*Where appropriate, singular terms used in this Lease include the plural, and pronouns of one gender include all genders.

Additional Agreements (if any): *This Lease Agreement is entered into to give David F. Durenberger, his family and guests, the right, upon seventy-two (72) hours' notice, to use the Apartment. The rent payable will be equal to the per diem costs of all expenses incurred in owning and operating the Apartment, including but not limited to, the mortgage payment, property taxes, insurance, association fees, utilities, etc.

Management (acting as agent for the owner of the premises) and Resident agree to the terms of this Lease and any attachments that may be made part of this Lease.

MANAGEMENT
Independent Service Company, Inc.
by P.O.
Paul Overgaard, Its President
Date signed 4/1/87

(Resident)
(Resident)
(Resident)
Date signed

Copy of document signed 3/1/88

TERMS OF THIS LEASE:

A. RENT

1. **PAYMENT:** RESIDENT will pay MANAGEMENT the full monthly rent before midnight of the first day of each month while this Lease is in effect and during any extensions or renewals of this Lease. Rent will be paid as required by MANAGEMENT.
2. **WHO IS RESPONSIBLE FOR RENT:** Each RESIDENT is individually responsible for paying the full amount of rent and any other money owed to MANAGEMENT.
3. **DUTY TO PAY RENT AFTER EVICTION:** If RESIDENT is evicted because RESIDENT violated a term of this Lease, RESIDENT must still pay the full monthly rent until: 1) the Apartment is re-rented, 2) the DATE THIS LEASE ENDS, or 3) if the Lease is month-to-month, the next notice period ends. If the Apartment is re-rented for less than the rent due under this Lease, RESIDENT will be responsible for the difference until the DATE THIS LEASE ENDS or, if the Lease is month-to-month, until the end of the next notice period.
4. **LATE RENT SERVICE CHARGE AND RETURNED CHECK FEE:** RESIDENT will pay the SERVICE CHARGE listed above if RESIDENT does not pay the full monthly rent by the 5th day of the month. RESIDENT also will pay a fee of $15 for each returned check.

B. USE OF APARTMENT

5. **OCCUPANCY AND USE:** Only the persons listed above as RESIDENTS may live in the Apartment. Persons not listed as RESIDENTS may live in the Apartment only with the prior written consent of MANAGEMENT. RESIDENTS may use the Apartment and utilities for normal residential purposes only.
6. **SUBLETTING:** RESIDENT may not lease the Apartment to other persons (sublet), assign this Lease or sell this Lease without the prior written consent of MANAGEMENT.

F

SINGLE PAYMENT, UNSECURED PROMISSORY NOTE

Face Amount: $10,299.96 April 1, 1987

FOR VALUABLE CONSIDERATION RECEIVED, Independent Service Company, Inc., a Minnesota corporation, ("Maker") hereby promises to pay to Durenberger Blind Trust, a trust governed by the laws of the State of Minnesota, ("Holder") or its order the sum of Ten Thousand Two Hundred Ninety-Nine and 96/100 ($10,299.96) Dollars in the following manner and upon the following terms and conditions:

1. Payment. The indebtedness represented by this Note shall be due and payable in a single payment December 31, 1992. Maker may prepay all or any portion of this indebtedness at any time without penalty. All payments shall be applied first to interest and the balance to principal.

2. Interest. Interest on the unpaid principal balance from time to time remaining shall be computed from and after the date of this Note. The interest rate shall be eight (8%) percent per annum.

3. Notice of Default--Grace Period. If Maker shall default by failing to perform the obligations imposed by this Note, then the Holder shall give notice to the Maker of the default and if the default is not cured within ten (10) days from and after the receipt of such notice, then the indebtedness represented by this Note shall become immediately due and payable. The Holder shall take no action against Maker and shall commence no proceedings for collection until the expiration of such notice.

4. Waiver. Maker waives demand, presentment, notice of nonpayment or dishonor, protest and notice of protest, and agrees that he shall continue to remain liable to pay the unpaid balance of the indebtedness evidenced by this Note as extended, renewed, or modified and notwithstanding any release or substitution of security on terms. Maker further agrees to pay all costs of collection, including reasonable attorneys' fees, in case any payment due hereunder shall not be made when due or other default occur.

5. Miscellaneous.

a. Notices. All notices required pursuant to the terms of this Note shall be in writing and either delivered personally or sent by certified or registered mail. If sent by mail, notice shall be deemed given when deposited in the

G

U.S. Mail, properly addressed and with postage prepaid. Unless changed by written notice, the following addresses shall be used:

Independent Service Company,
Inc.
P.O. Box 171
North Highway 13
Albert Lea, MN 56007

Durenberger Blind Trust
4150 Multifoods Tower
Minneapolis, MN 55402

In all cases, for any such notice to be effective, a copy shall be sent to:

Michael C. Mahoney
Curtin, Mahoney & Cairns
A Professional Association
4150 Multifoods Tower
Minneapolis, MN 55402

b. Governing Law. This Note shall be construed and interpreted in accordance with the laws of the State of Minnesota.

c. Binding Effect. Except as herein otherwise provided to the contrary, this Note shall be binding upon, and inure to the benefit of, the Parties and their respective heirs, executors, administrators, successors and assigns.

IN WITNESS WHEREOF, the undersigned has set his hand.

INDEPENDENT SERVICE COMPANY,
INC.

By PO.
Paul Overgaard

Copy of note signed 3/01/88

H

SINGLE PAYMENT, UNSECURED
PROMISSORY NOTE

Face Amount: $9,995.66 January 1, 1987

FOR VALUABLE CONSIDERATION RECEIVED, Independent Service Company, Inc., a Minnesota corporation, ("Maker") hereby promises to pay to Durenberger-Scherer Partnership, a Minnesota general partnership, ("Holder") or its order the sum of Nine Thousand Nine Hundred Ninety-Five and 66/100 ($9,995.66) Dollars in the following manner and upon the following terms and conditions:

1. Payment. The indebtedness represented by this Note shall be due and payable in a single payment December 31, 1992. Maker may prepay all or any portion of this indebtedness at any time without penalty. All payments shall be applied first to interest and the balance to principal.

2. Interest. Interest on the unpaid principal balance from time to time remaining shall be computed from and after the date of this Note. The interest rate shall be eight (8%) percent per annum.

Cancelled

3. Notice of Default--Grace Period. If Maker shall default by failing to perform the obligations imposed by this Note, then the Holder shall give notice to the Maker of the default and if the default is not cured within ten (10) days from and after the receipt of such notice, then the indebtedness represented by this Note shall become immediately due and payable. The Holder shall take no action against Maker and shall commence no proceedings for collection until the expiration of such notice.

4. Waiver. Maker waives demand, presentment, notice of nonpayment or dishonor, protest and notice of protest, and agrees that he shall continue to remain liable to pay the unpaid balance of the indebtedness evidenced by this Note as extended, renewed, or modified and notwithstanding any release or substitution of security on terms. Maker further agrees to pay all costs of collection, including reasonable attorneys' fees, in case any payment due hereunder shall not be made when due or other default occur.

5. Miscellaneous.

a. Notices. All notices required pursuant to the terms of this Note shall be in writing and either delivered personally or sent by certified or registered mail. If sent by mail, notice shall be deemed given when deposited in the

U.S. Mail, properly addressed and with postage prepaid. Unless changed by written notice, the following addresses shall be used:

Independent Service Company, Inc. P.O. Box 171 North Highway 13 Albert Lea, MN 56007	Durenberger-Scherer Partnership __________________________ __________________________ __________________________

In all cases, for any such notice to be effective, a copy shall be sent to:

Michael C. Mahoney
Curtin, Mahoney & Cairns
A Professional Association
4150 Multifoods Tower
Minneapolis, MN 55402

b. Governing Law. This Note shall be construed and interpreted in accordance with the laws of the State of Minnesota.

c. Binding Effect. Except as herein otherwise provided to the contrary, this Note shall be binding upon, and inure to the benefit of, the Parties and their respective heirs, executors, administrators, successors and assigns.

IN WITNESS WHEREOF, the undersigned has set his hand.

Cancelled

INDEPENDENT SERVICE COMPANY,
INC.

By Paul Overgaard
Paul Overgaard

J

Corporation or Partnership
to Corporation or Partnership

No delinquent taxes and transfer entered; Certificate of Real Estate Value ( ) filed ( ) not required
Certificate of Real Estate Value No.________
__________, 19 ____

____
County Auditor

by __________
Deputy

STATE DEED TAX DUE HEREON: $ ________

Date: April 1, 19 87

(reserved for recording data)

FOR VALUABLE CONSIDERATION, Durenberger Blind Trust, a trust under the laws of Minnesota, Grantor, hereby conveys and quitclaims to Independent Service Company, Inc., Grantee, a corporation under the laws of Minnesota, real property in Hennepin County, Minnesota, described as follows:

See Exhibit A attached hereto and incorporated by reference

(if more space is needed, continue on back)

together with all hereditaments and appurtenances belonging thereto.

Affix Deed Tax Stamp Here

Durenberger Blind Trust
By Michael C. Mahoney, Trustee
Its Trustee

By __________
Its __________

STATE OF MINNESOTA
COUNTY OF Minnesota } ss.

The foregoing was acknowledged before me this 1st day of April, 19 87, by Michael C. Mahoney, Trustee and ------------------------ the Trustee and ------------------------ of Durenberger Blind Trust, a trust under the laws of Minnesota, on behalf of the Durenberger Blind Trust.

NOTARIAL STAMP OR SEAL (OR OTHER TITLE OR RANK)

TAMARA K. HARDY
NOTARY PUBLIC — MINNESOTA
HENNEPIN COUNTY
My Commission Expires Aug. 27, 1992

Tamara K Hardy
SIGNATURE OF PERSON TAKING ACKNOWLEDGMENT

Tax Statements for the real property described in this instrument should be sent to (include name and address of Grantee):

THIS INSTRUMENT WAS DRAFTED BY (NAME AND ADDRESS):

K

Paul P. Overgaard, President

ISC INDEPENDENT SERVICE COMPANY
Hwy 13 North P O Box 171 Albert Lea, MN 56007 (507) 373-8216

April 7, 1988

Mr. Michael C. Mahoney
Curtin, Mahoney, Cairns & Walling
Attorneys at Law
4150 Multifoods Tower
Minneapolis City Center
Minneapolis, MN 55402

RE: Durenberger Transaction

Dear Mike:

I sent the signed documents back to you on March 10th, almost thirty days ago, and have not received your response.

In the meantime, my auditor is anxiously awaiting final information to complete our 1987 May 31st Year End so he can start on the 1988 one in six weeks or so. It has been seven months since this was initiated and enthusiasm is waning.

Please respond as soon as possible so this can be completed. The taxes will be due again on May 15th and the transfer of ownership is not even completed so we get the correspondence. A recent letter came to us by way of Jean Stow from the Minneapolis Assessor's office reflecting the partnership.

I'm sure you are as tired of this as we are but we are down to the wire and minimal effort should clean up the problem.

Please advise us of anything we can do to expedite this. Thank you.

Very truly yours,

Paul

PAUL P. OVERGAARD

PPO/egb

RADA

SPECIAL
COUNSEL
HEARING
EX. 377

Paul P. Overgaard, President

ISC INDEPENDENT SERVICE COMPANY
Hwy. 13 North P.O. Box 171 Albert Lea, MN 56007 (507) 373-8216

Mike
I'll be arranging
mtg w/ you week of
3/21 re- this!
— Thanks.

January 11, 1989

Senator David Durenberger
375 Russell Senate Office Building
Washington, DC 20510

Dear Dave:

It is now nearly three years since we entered into an agreement that Independent Service Company would buy your condominium unit. ISC made the-agreed-to payments, executed the contracts provided and assumed payments to the bank, management company for monthly service and payment of taxes.

To date, we have received no executed documents showing the transaction to be completed. Tax statements still come in your name. The bank loan is still in your name and nothing seems to be happening.

My corporate financial statement was never completed for 1987 because my accountant could not get verification of ownership. That was the first year we were to have an audited financial statement. Year 1988 was just completed and then only after the auditor gave up in frustration and issued a qualified opinion because he could not get clear evidence of ownership. We have completed everything we were asked by Mike Mahoney to do but he has not furnished any documents signed by the seller or an authorized agent.

My corporate fiscal year will close on May 31. I can not go through another closing with a major item unresolved. My accounting charges were nearly $2,000.00 higher than planned because of delays on this transaction and I'm sure you understand I can't have this problem continue.

It appears that Mike Mahoney just will not complete this transaction. I have called, written and talked to him on numerous occasions and nothing will move him. If this is the way he is handling other matters, you have reason to be concerned.

AADA
MEMBER

SPECIAL
COUNSEL
HEARING
EX. 386

If things can't go forward, then please, can we reverse the transaction and call the whole thing off. I have no complaints about any other aspect of the deal but I'm sure you understand my frustration.

Sincerely,

Paul

PAUL P. OVERGAARD

PPO/dct

Dave,
I've asked Kitty to get me on your Minn. schedule in February so we can talk about this! -

3/23/89

I dined w/ P.O. 3/22 and we agreed he should have the orig. of QCD, copy of any agreement executed by Mahony as trustee Blind Trust, and copy of Residential Lease executed by DFD.

3/23 — Tamara promised to attend to these matters.

3/23

SPECIAL
COUNSEL
HEARING
EX. 387

Mike Mahoney

re: #603 - Tower of 1200 on Mall

Please sign the original of the enclosed April 1, 1987 letter agreement as amended by Paul Amergoard and send to him at Independent Service Co, along with the executed original of the quit claim deed (copy enclosed).

8/5/89

SPECIAL
COUNSEL
HEARING
EX. 393

5/17

1) Call MM - Sign sale

2) 4/30 - DD signed LEASE Amdt in. by MM which PO had signed 2 wks ago

CURTIN, MAHONEY, CAIRNS & WALLING
A Professional Association
Attorneys at Law
4150 Multifoods Tower
Minneapolis City Center
Minneapolis, Minnesota 55402
(612) 333-5411

TELECOPIER COVER LETTER

PLEASE DELIVER THE FOLLOWING PAGES

TO: NAME: Senator Dave Durenberger

ADDRESS: [redacted]

TELEPHONE:

FROM: NAME: Tamara K. Hardy

ADDRESS: [redacted]

TELEPHONE:

DATE: ~~4/26/89~~ 4/28/89 TIME:

SPECIAL INSTRUCTIONS: Pursuant to your instructions we are preparing documents to forward to Paul Overgaard. In reviewing the letter of understanding, we noted a paragraph had been amended. Such Paragraph has been marked on the attached page. Please review and call myself or Michael with comments. We are not forwarding this letter until we have your comments.

TOTAL NO. OF PAGES INCLUDING THIS COVER LETTER: 3

WE ARE TRANSMITTING ON THE FOLLOWING SPEED:

2 ____, 3 ____, 4 ____, 6 ____ (Min.)

IF YOU DO NOT RECEIVE ALL THE PAGES, PLEASE CALL OUR OFFICE AT (612) 333-5411 AS SOON AS POSSIBLE. THANK YOU.

SPECIAL
COUNSEL
HEARING
EX. 391

000060

Telecopier Phone: (612) 339-6962

C,M,C&W Operator: T

Our File Name: 1468-001

Our File Number: Durenberger

CURTIN, MAHONEY, CAIRNS & WALLING
A Professional Association
Attorneys at Law
4150 Multifoods Tower
Minneapolis City Center
Minneapolis, Minnesota 55402
(612) 333-5411

TELECOPIER COVER LETTER

PLEASE DELIVER THE FOLLOWING PAGES

TO: NAME: Senator Dave Durenberger
ADDRESS:
TELEPHONE:

FROM: NAME: Tamara K Hardy
ADDRESS:
TELEPHONE:

DATE: ~~4/[illegible]~~ 4/28/89 TIME:

SPECIAL INSTRUCTIONS: Pursuant to your instructions we are preparing docum
to forward to Paul Overgaard. In reviewing the letter of understanding n
noted a paragraph had been amended. Such Paragraph has been marked
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2 ___, 3 ___, 4 ___, 6___ (Min.)

IF YOU DO NOT RECEIVE ALL THE PAGES, PLEASE CALL OUR OFFICE AT (612) 333-5411 AS SOON AS POSSIBLE. THANK YOU.

Telecopier Phone: (612) 339-6962

C,M,C&W Operator: T

Our File Name: 1468-001

Our File Number: Durenberger

SPECIAL
COUNSEL
HEARING
EX. 390

A

Ex. 91

April 1, 1987

ATTN: MR. PAUL OVERGAARD -

Independent Service Company, Inc.
P.O. Box 171
North Highway 13
Albert Lea, MN 56007

SALE OF APARTMENT NUMBER 603, APARTMENT OWNERSHIP NUMBER 128,
THE TOWER OF 1200 ON THE MALL

Ladies and Gentlemen:

This letter will set forth our understanding concerning the sale of the above-referenced condominium.

Durenberger Blind Trust, a trust governed by the laws of the State of Minnesota, will agree to sell Apartment Number 603, Apartment Ownership Number 128, The Tower of 1200 on the Mall, legally described on Exhibit A attached hereto, for a purchase price of $52,804.30. The sale will take place as of April 1, 1987. The purchase price will be paid as follows:

Subject to existing first mortgage	$35,154.34
Cash:	$7,350.00
Five-year promissory note:	$10,299.96

The sale of this condominium will be subject to a lease between Independent Service Company and David F. Durenberger. Upon 72 hours notice, David F. Durenberger, his family or guests, may use the condominium. The rent payable will be equal to the per diem costs of all expenses incurred in owning the condominium, including, but not limited to, mortgage payment, association fees, real estate taxes, and insurance. At the end of each month during the term of the lease, the total cost of owning and operating the apartment shall be calculated by Independent Service Company for said month and said total cost shall be promptly paid by David F. Duremberger, irrespective of the number of days in which Mr. Durenberger actually uses the apartment during said month.

B

If this letter accurately states our understanding, please indicate by signing below.

Very truly yours,

DURENBERGER BLIND TRUST

By____________________________
Michael C. Mahoney
Its Trustee

Agreed to:

INDEPENDENT SERVICE COMPANY

By Paul Overgaard
Paul Overgaard
Its President

C

7/26/89

Dave

I'm still hoping to get the sale documents I need to get my certified audit completed. An important prospective client is deferring a decision until he sees my financial statements!

Paul

I delivered written instructions to MM on Mon. Aug. 7 to sign & send letter of support & submitted OCA to D.O. [illegible] 8/8

SPECIAL
COUNSEL
HEARING
EX. 392

Ex. 92

mike mahoney

re: #603 - Tower of 1200 on Mall

please sign the original of the enclosed April 1, 1987 letter agreement as amended by Paul Overgaard and send to him at Independent Service Co, along with the executed original of the quit claim deed (copy enclosed).

8/5/89

SPECIAL
COUNSEL
HEARING
EX. 393

Ex. 93

Deloitte &
Touche

1800 Landmark Towers
345 St. Peter Street
Saint Paul, MN 55102-1858

Telephone: (612) 222-2514
Telecopy: (612) 297-6353

January 9, 1990

Mr. Michael Mahoney
Mahoney, Walling & Kelley P.A.
4150 Multifoods Tower
Minneapolis, Minnesota 55402

RE: Tax status of 703/603 Association

Dear Michael,

You have asked us to review whether it was appropriate to report the operations of the 703/603 Association as a "tax" partnership, to be filed on a form 1065. Based on the facts outlined below, the rental activity may be construed as a joint venture, properly reportable as a tax partnership. Consequently, any related income or loss from the partnership should have been included in Dave Durenberger's 1983 return.

To summarize the facts, Durenberger and Scherer individually owned condominium units 603 and 703, respectively. On July 28, 1983, the parties reached an oral agreement to jointly operate the condominiums as rental properties, and accordingly they would share in the profit and losses from their venture. No written partnership agreement or deeds were executed in 1983; however, a partnership tax return was filed for 1983.

In 1984, a written partnership agreement and deeds transferring title to the partnership were executed. The effective date of these documents was July 28, 1983, corresponding to the date of the oral agreement.

Because the deeds were not executed in 1983, the partnership did not have the best evidence of title until 1984. Accordingly, there is some question as to whether the partnership owned the Units in 1983. We understand however, that the partners intended to convey their interests in the units to the partnership and agreed to share the profits and losses on the combined units from July 28, 1983. For tax purposes, a partnership may exist outside of the legal formalities of partnership and real estate law, and may include a "joint venture". To have a joint venture, IRS Regulation Section 301.7701-3(a) requires the existence of some business enterprise operated by 2 or more persons. The mere sharing of expenses is not sufficient, but rather a sharing of profits and losses of a business activity is required.

Mr. Michael Mahoney
Page 2

In the arrangement between Durenberger and Scherer, the parties agreed to share in the profits and losses of the combined rental operations of the condominiums. Therefore, even though legal title may not have been transferred, the parties had probably entered into a joint venture, constituting a partnership for tax purposes. Thus, the combined operations of the activity were properly reported and characterized in 1983 on form 1065, and the corresponding income or loss should have been included in each partners' individual tax return.

If you would like to discuss the above in more detail, please give us a call.

Sincerely,

James A. Weichert

Senator Rudy Boschwitz
WASHINGTON, DC 20510

June 8, 1990

The Honorable Dave Durenberger
U.S. Senator
SR-154

Dear Dave:

Your Counsel has asked me to provide you with information concerning the number of nights a year I spend in Minnesota and what percentage of those nights is spent in the Twin Cities area. Since I usually fly around in Minnesota and make a point of coming home to the Twin Cities at night, I spend few nights outside the Metro area.

In 1989, I spent 144 nights in Minnesota. On twenty-four evenings, I stayed outside the metro area (two on the Farm Tour, for sure). The balance were at my house in the Twin Cities. 1989 was a bit heavier than usual as I was in my re-election cycle.

1988 was a more typical year and I spent 122 nights in Minnesota. Nine were outside the metro area (three on the Farm Tour). The balance were at my Twin Cities home.

Sincerely,

Rudy

Rudy Boschwitz

RB:ds

NOT PRINTED AT GOVERNMENT EXPENSE

Page 356 Blank

VOLUME III

EXHIBITS 96–110

VEACH
5-1-89
183 pp
3.0 hrs

UNITED STATES SENATE
Select Committee on Ethics
Washington, D.C.

- - - - - - - - - - - - - - - - - - x
:
In the Matter of: :
:
Preliminary Inquiry Concerning :
Senator David Durenberger :
:
- - - - - - - - - - - - - - - - - - x

Suite 540
Embassy Suites
425 South 7th Street
Minneapolis, Minnesota 55415

Wednesday,
April 26, 1989

Personal Interview/Deposition of:

GARY DIAMOND

a witness, called for examination by counsel for the Committee, pursuant to notice, commencing at 9:20 a.m., before William J. Moffitt, a court reporter, when were present on behalf of the respective parties:

APPEARANCES:

On Behalf of the Committee:

WILSON ABNEY, Esquire
Staff Director and Chief Counsel

VICTOR BAIRD, Esquire
Counsel

HOUSTON FULLER
Office of Special Investigations
General Accounting Office

Exhibit
96

DIRECT EXAMINATION

BY MR. BAIRD:

Q Mr. Diamond, just put your name and address in the record for us, if you would, please.

A Gary Lee Diamond, 4504 Excelsior Boulevard, Minneapolis, Minnesota 55416.

Q And what is your occupation, sir?

A Publisher.

Q And what do you publish?

A At the present time we publish trade magazines in the restaurant field. We have owned and published weekly newspapers, and we have published some books.

Q Do you do your publication in your own name or are there companies, corporations which you own or control to do the publishing?

A The trade magazines are published under the name Northwest Beverages Journal, Incorporated, a Minnesota corporation. The books which we published for Senator Durenberger were published under the name Piranha Press, Incorporated, a Minnesota corporation, which formerly was Fair Enterprises, Incorporated.

Q Okay. What does Northwest Beverages Journal, Inc. publish?

A They publish trade magazines in the restaurant and hospitality field.

Q Okay. And how long has that corporation published those?

A Since 1947.

Q Okay. You mentioned Fair Enterprises, Inc. What did Fair Enterprises, Inc. publish? What was the business?

A Fair Enterprises, Inc. publishes -- the basic publications it put out over the years was a Minnesota State Fair Program for the Minnesota State Agricultural Society. It also has published on occasion other sporting programs, publications. And most recently it published Senator Durenberger's books.

Q Okay. You say Fair Enterprises, Inc. Is that -- was that the name of the corporation at the time it published Senator Durenberger's books?

A I believe it was the name at the time it published the first book.

We changed the name sometime thereafter, although that was only a name change. Legally the corporation is still the exact same as it was under Fair Enterprises. Nothing changed but the name.

Q What books have you published--you or your corporations published--authored by Senator Durenberger?

A We published a book on military policy called "Neither Madmen Nor Messiahs." And we published a book on health policy called "Prescription for Change."

we were going to do with it.

I had initially said, you know, this -- everybody in the Government -- everyone in the Defense Department should get a copy and the State Department and the Administration; in other words, to put forward his views. But initially I don't think I was thinking of actually making any money with it. It was more to promote the Senator's views and to help me establish a small book publishing company for political and historical books.

Q Had you or any of your publishing companies ever published a book prior to this?

A If you mean in book form, once we published a wrestling -- a book on wrestling and sports, in book format. Otherwise, our publications have all been magazine format or newspaper format.

Q Okay. What year was the wrestling book and what size book are we talking about?

A Early '70s or late '60s. It was a book of about 8.5 by 11, maybe 100 pages.

Q And what did that consist of?

A It consisted of showing different wrestling holds.

Q How did you try to market that book?

A That book was marketed on newsstands and at the boxing wrestling matches.

kind of book, marketing of this kind of book?

A They said their -- the costs of producing and marketing this kind of book just -- there would not be enough of an interest in these subjects to warrant their doing it. And that was just about the answer from every one of them.

Q Do you have any reason to question their judgment on that?

A No, because they're big companies and they have to make a friarly large amount on the books they publish in order to come out.

Q So how, then, did you go about deciding to publish it yourself?

A I couldn't get anyone else to do it.

Q Okay. Did you evaluate whether or not you might be able to make a profit off the sale of the books?

A I knew what it would cost to publish it. I wasn't sure how much we could actually make on it, but I thought I had enough of a reason in that if I could establish a small publishing company, it would be worth my while to spend the money.

Q How so?

A With -- if I could do a good job with Senator Durenberger's books, I might be able to get other senators, congressmen, political people, and military people in

Washington to handle books for them.

Q And how much did you estimate that it was going to cost you to publish the "Neither Madmen Nor Messiahs"?

And how did you decide how many copies to publish?

A I think we estimated about $20,000, the printer estimated on how much type had to be set.

And we decided on 5,000 copies because that was the point at which if you publish much fewer, you don't save much because the cost is in the -- what they call the "make-ready" typesetting, laying it out, getting it ready for the press. Once it's on the press, it costs about the same to produce 5,000 copies as it would 1,000, the only difference being in the amount of paper used.

Q And what did you estimate the total publication cost to be before you actually proceeded?

A I believe we were thinking in the neighborhood of $20,000 --

Q Uh huh.

A -- to put out 5,000 copies.

Q 5,000 copies. How many copies did you ultimately have printed of "Neither Madmen Nor Messiahs"?

A The first run was 5,000. I believe we went on -- back on for another round of 5,000.

Q And in what time frame did you go back for the decisions to give away the books?

A Yeah. Everything we did in that was -- I did.

Q Did you discuss any of what you planned to do with Senator Durenberger?

A I probably told him that I was going to see that the book got to these people. I don't think we ever had an actual discussion on it.

Q Well, when did the -- was the suggestion made to you that the attorney should get involved and there should be a written contract prepared between you and Senator Durenberger?

A When they decided to promote the book with the Senator, where there would be money coming in.

Q When --

A When -- I can't really give you a date, but I know when -- just before we were going to do the health book, it was mentioned that the Senator could give -- could promote it, and we could charge for his appearances. And that would bring money in.

As soon as money was involved, I felt there should be a -- something written.

Q You say it was mentioned to you that the Senator could make appearances and that he could --

A He could charge for it as a speaker's bureau or promotional bureau, or whatever.

Q Who mentioned that to you?

A The Senator's attorney.

Q His name?

A Michael Mahoney.

Q Okay. And what did he tell you about that proposal?

A He said, "Would you be willing to handle appearances for the Senator? You could charge for his appearances and also handle the publication of another book."

Q And did he tell you --

A I said --

Q Go ahead.

A I said, "Yes."

Q Uh huh. Did he tell you that he had discussed that idea with the Senator?

A I don't recall if he said that in those words, but he is -- he's the Senator's personal attorney, so I just assumed that he obviously would have.

Q Okay. Did you discuss that idea with the Senator, that proposal?

A No, no.

Q Okay. So Michael Mahoney came to you at some time when you were considering the second book?

A Either right before or right during when someone proposed a second book.

Q Uh huh.

A At that time, yeah.

Q Now, at that time you had lost, let's say, on the first book a considerable --

A We had a considerable investment.

Q Okay.

A At least for the size of our firm, we had a considerable investment.

Q Okay. Did you ever approach the Senator or the Senator's attorney about somehow paying those expenses of publication?

A No.

Q Okay. The idea of the appearances, did you understand there that -- who did you understand was going to have the responsibility for arranging those appearances at the time?

A Well, I understood that it would be: My office would have the responsibility except insofar as the scheduling had to be cleared through the Senator's office, of course.

MR. BAIRD: Mr. Moffitt, do you have a -- will you mark an exhibit for us, please, sir?

A I didn't really have an estimate, really. My idea was to get -- to establish myself as a book publisher in the political field.

Q And so you were prepared to take whatever loss --

A In order to get the publishing company going, yeah.

Q What did you understand at the time were the traditional and customary means of promoting the sale of the book?

A Well, I just assumed, being in the publishing business, that the traditional means were through advertising and through book reviews and through talk shows.

Q We're not publishers. You are. And we appreciate having the benefit of your experience in that regard. Since your initial publishing activity, is that still your understanding of the traditional and customary means of promoting books?

A Yeah. It's -- insofar as a small company goes, I don't think there is any other way, just advertise and promote. These larger companies have their own distribution channels, --

Q Uh huh.

A -- their own stores, like Brentanos and McGraw-Hill and Doubleday. So they can promote a little

A Well, actually, I had my son, who is a lawyer, draw it up.

Q Okay. And --

A But then Mahoney's office wanted a -- wanted something different.

Q So Mahoney comes to you with a proposal for appearances?

A Yeah. I -- he --

Q And did you get your attorney involved immediately or --

A No, not immediately. I said -- actually, mostly it was on the phone. And I said, "Now, is what -- is this legal?" And, you know, "Have you checked it out?" And --

Q This is a telephone conversation --

A Yeah.

Q -- with Mahoney?

A And he said, "We will."

And I didn't know anything about the Ethics Committee. I didn't even know there was such an animal.

I had mentioned the Federal Election Commission.

Q Okay.

A He said they would check it out.

Q Okay. So you --

A Because this was after the stories had appeared in the paper and after -- yeah, after the first stories had

Mahoney?

A I'm not sure, other than the fact that I knew there was a Federal Election Commission that ruled on what you could do for money.

Q Yes. And he was talking about publishing a second book at this point also; right?

A Yeah, uh huh.

Q What was your reaction to that?

A I said, "Fine."

Q You said, "Fine"?

A If we could figure a way to pay for it.

Q Right. And did you inform him at that time that you -- whether you would be willing to pay the expenses of a second book?

A Well, I said I really wasn't in a position to cover all the expenses of the second book, that we had to bring in some money. And that's where the --

Q And what was he suggesting as a way to generate money?

A Well, that the Senator could promote the book, and we would book them for speaking engagements. And we would charge for the engagements, and we would keep the money, in return for which we would publish the book.

Q Okay. So you would --

A That --

Q The proposal was that the Senator would make speaking appearances for which you, the publisher, Piranha Press, could charge the audiences for his appearance?

A Charge the organizations, not -- well, the -- yeah. Well, --

Q Yes.

A -- the organizations for the appearance.

Q Organizations.

A Yeah.

Q What kind of organizations did Mr. Mahoney suggest to you at that time?

A I don't think we ever talked about what type of organizations, although eventually it turned out mostly in the health field because the book was done on health policy, --

Q Uh huh.

A -- although we also had some in the military field, I believe.

Q How were you going to locate those organizations? Did he tell you that?

A He said that he got many inquiries.

Q "He" being the Senator?

A Well, either the Senator's office and/or the Mahoney as his attorney.

Anyway, they got inquiries about the Senator's speaking.

Q And what? Was he suggesting to you about directing those inquiries -- asking you if you could handle those inquiries?

A That if we could handle speaking arrangements for the Senator --

Q Uh huh.

A -- in which we would receive--what do you call it?--stipends. Well, anyway, in which we received the money.

Q From the?

A From the engagements. And we would use that money to publish the book -- a book or books.

Q Uh huh. And how much was the Senator to be paid?

A The Senator was to be paid a salary of $12,500 quarterly.

Q Did Michael Mahoney suggest that figure to you?

A I believe so.

Q I mean, is this all in one conversation --

A No.

Q -- initially or --

A No, no. There were probably four or five phone calls.

Q Yes. Did you ask about the amount that you would be required to pay the Senator directly of Mr.

Mahoney or did you ever ask the Senator about the amount that --

A I never had a conversation with the Senator about any of this, period. Mahoney and I went over all this.

I don't recall how the amount 12,500 came up and how we decided on it, but that was the figure that we eventually did decide on. That was the amount that was eventually paid him.

Q Was your attorney --

A No. He was not involved in any of that.

Q He was not involved in any of --

A That.

Q -- in determining that amount at all?

A No.

Q Who -- this was just between you and --

A Between myself and Mahoney.

Q Michael Mahoney.

And either you or he came up with the 12,500 figure or are you certain that that was a suggestion that he made?

A I think it would have had to have been on his side because I don't know where I would come up with it other than in figuring out how much money there would be involved, how much would be necessary for the publication of the books, how much would -- our firm could make on the answer.

Q And you had the question for him about whether this is legal, whether --

A Yeah, because there's always -- once money's involved, there's just naturally in politics -- would ask the question, "Is it legal?"

And he's an attorney dealing in Washington. I figured he would be able to get the answers.

And, in fact, we did get the answer from the Federal Election Commission, which said it was, that everything we did was and is. If they change their mind now, it's late. So not guilty retroactively, or whatever because we got it. Everything we did is -- they said was okay.

Q Uh huh.

A Now, I did not know or ask about the Ethics Committee. I didn't know about the Ethics Committee or anything about that. So I never did ask whether it was cleared or anything until after the newspaper stories appeared and I said, "Jesus. Did anybody talk to the Ethics Committee?" And I believe Doug Kelley said, "Yeah, we did."

Q Uh huh.

A The Election Commission I didn't have any doubts about because we had and have an okay from them.

Q Did you understand that -- was there an agreement as to whose responsibility it was to arrange the appearances?

A No set responsibility. Just anybody who had someone who wanted him would let us know and we'd get out a letter to them.

Q Okay. And how were you to be informed that someone wanted him to make an appearance?

A Generally, if it came through the Senator's office, they would -- I think they would inform Mahoney's office because we had a girl there who was handling the day-to-day keeping track of the appearances requested.

Then they would give us the names, and we would send out a letter stating what the deal was and "Do you want him?"

Q As you were negotiating with Michael Mahoney, did you reach any agreement with him as to the payment of royalties to the Senator?

A No. And I don't even remember reading that, although obviously it's in there. There were never any royalties paid or anything along that line. I don't remember that, and I think that it would have been taken out if we had ever reached a final copy.

I just don't know enough about royalties to have gotten involved in that.

Q And the advances are generally advances against royalties?

A That I don't know. I think the advance -- it may be against royalties, but they get to keep it if there are no royalties.

Q Uh huh.

A But we had no advance, and I -- sitting here, I would say I would not have gotten involved with royalties if for no other reason, we just weren't set up to handle that kind of bookkeeping.

But in any case, there never were any royalties paid. He got his flat 12,500 a quarter.

BY MR. BAIRD: (Resuming)

Q Did you understand -- did you reach an agreement with Mr. Mahoney as to who was going to pay the Senator's travel expenses in connection with his appearances?

A No. In some cases, I know the -- where he made the appearances, they were paying the expenses, but I don't really -- expenses never really entered into our area.

Q Did you notice or realize that the agreement which you signed some version of called for the publisher to pay the travel expenses in connection with the appearances?

A Yes. And I apparently agreed to it, but we never did.

Q You never --

A Never paid him any other money, other than the 12,500, unless somewhere in there it says that that part of that is for his travel. But, as I say, the only thing we ever paid him was the 12,500. And we weren't asked for anything else, so --

Q How did you decide how much was going to be charged for an appearance by the Senator?

A Pretty much by distance: 2,000 within Washington, D.C.; 2,000 within Minnesota. But then if he had to go other places, it would be more in comparison to that length of travel, length of time, other than if we got something like Exxon. I would usually put a higher price on it if it was a gigantic corporation or something.

And likewise if it was a charity or a college or something, he usually did it for free or for very little, in which case I would just point them back to the Senator's office and say, "If you want it free or for charitable donations, deal direct."

BY MR. ABNEY:

Q But couldn't he have promoted the sale of his books at those --

A Oh, sure. Sure.

BY MR. BAIRD: (Resuming)

Q Did you anticipate that the Senator would actually sell books at the appearances?

A No.

Q Okay.

A Except insofar as authored parties at B. Dalton and that where he would autograph books.

Q Okay.

A And -- but even -- it's so few that I don't recall a single instance where he actually sold a book himself.

Q So you didn't anticipate that at the book promotion appearances, the books would actually be for sale?

A Well, no. We did in instances where the organization would handle it. In other words, there wasn't enough money in it for me to fly out or send someone out to set up a display and sell books, but if the organization had somebody who would handle it, have a table with his book for sale, I did on occasion send books by UPS. And they would sell and then send back whatever was left over. It wasn't too often, though.

MR. BAIRD: Yes.

Let me get another exhibit marked here. Make that Number 3.

A No.

Q -- of those three books or any part?

A No. I really wasn't involved other than a couple of press parties that we had here that I arranged. Once the bookstores got it, they did their own thing and they didn't really ask anything.

MR. BAIRD: Okay.

Let me get that marked.

(The document referred to was marked for identification as Exhibit No. 4.)

BY MR. BAIRD: (Resuming)

Q Did you work out with Mr. Mahoney the details of how the appearances were going to be scheduled or --

A Well, they would have to be cleared through the Senator's office.

Q And how was that going to work?

A We had a girl in Mahoney's office who coordinated with the Senator's office.

Q Did it start out that way?

A Yes.

Q Even from the very beginning, the very first appearance?

A Yes.

MR. BAIRD: Let me ask you to look at Exhibit

A Oh, gosh. No. Most of the calls would initially come to his office, and then they would give them to our people, which is -- you know, normally, they wouldn't -- nobody would know about me or, for that matter, about Mahoney's office.

Q Okay. So, to your knowledge, am I correct that there are no appearances where the audience paid for the Senator to appear and speak where that resulted from Gary Diamond or Piranha Press going out and finding a group who was willing to pay to have the Senator appear to promote his book?

A I don't want to say none, but I'd say the initial -- the initial asking for the Senator to speak was directed at his office by the people.

Q Okay.

A And then we would follow up or they would send them to us.

BY MR. ABNEY:

Q The "we" being?

A Piranha Press.

Q Mr. Mahoney's office acting on your behalf?

A Yeah, or in some cases I called the people.

MR. ABNEY: Okay.

BY MR. BAIRD: (Resuming)

Q But let me see if I understand the answer to your

Q Yes. Exhibit 7, I guess we're talking about here.

A Yeah.

Q I'm sorry. I misidentified it. Okay.

Let me ask you about that letter. If you could take a moment to look at it?

(Pause.)

BY MR. BAIRD: (Resuming)

Q Did you draft this letter?

A No. Mahoney's office drafted the letter, --

Q Okay. It was written by Mr. Mahoney.

A -- which they were supposed to do because they were supposed to make sure that it was within the law.

Q Uh huh. And how would this letter or a copy of this letter come to be sent to a potential appearance sponsor?

A When someone would ask for the Senator to speak before them, then I would send this to them explaining what we were doing.

Q How would it come to you?

A Generally, as I say, the Senator's office would tell us.

Q Tell "us"?

A Tell us, being the people I had working for me.

Q Over at?

them. How did --

A Well, he was supposed to insofar as I was concerned. I said, "For God sakes, promote the book." But --

Q Who did you say that to?

A Dave.

You know, if I'd see him at a political deal, I'd say, "Keep promoting the book." That was -- just goes without saying. I mean, you've got a book out, you want it promoted.

BY MR. BAIRD: (Resuming)

Q Did he ever respond to you when you made statements like that to him?

A I don't know what he said, but yeah, I just --

Q Did --

A Just in passing, I'm sure he said, "Of course. I'll remember," or something like that.

Q You said you and he? You never negotiated any of the terms of the agreement with him?

A With the Senator? Never ever.

Q After it was negotiated and you were up and running, so to speak, and appearances were being made, did you ever have occasion to talk to the Senator about your arrangement with him?

A No. Anything that had to do with that, I talked to Mahoney.

Q Yes.

A There was no reason why I couldn't have that I know, but I just never did because the lawyer was his lawyer. He was making the arrangements. I was working with him. There was no reason to talk to Dave.

MR. ABNEY: Could I interrupt for a second?

MR. BAIRD: Yes.

BY MR. ABNEY:

Q The appearances that you went to, did you take copies of the book to those appearances to sell?

A Myself personally, no.

Q Were there copies of the books there to be sold?

A At some of them.

Q At some of them?

A At some. Where I could get -- as I said before, if I could get someone in the organization to set up a table to have the book available, we did.

Q Did you encourage the Senator to do that at all the appearances that he made?

A We -- well, not the Senator, but we tried with all the organizations, to -- we asked them if they would set up a table.

Q Who asked them?

A Well, the people in Mahoney's office when they were talking. No, that they would call on the phone.

Did we put anything on that in the letter? (Perusing document.) Oh, yeah. We did ask in the letter, but we also followed up with a phone call where we talked to them.

Q And part of the reason to follow up with that phone call is specifically to ask about space for selling the book?

A Well, yeah, and also just the fact that you're talking to someone, you get it -- you get the thing.

Q And did you ever sell any books through that process?

A On occasion, yes. Not a great many.

Q Do you know how many times that, in fact, books were for sale at the Senator's appearances?

A No, not really. I know we sent books out to a number of organizations quite often, you know, but whether I could say it was 20 times or 40 times, I couldn't.

Q Well, you were pretty much making your money on the appearance fees themselves; right?

A Yes.

Q And you really didn't care that much whether the books sold; is that correct?

A No, that's not correct. We would have liked the book to have sold a lot.

Q But --

A But we could make money on the book. I mean, obviously, a book on health policy is not "Gone With the Wind." It just is not going to do a major -- be a major bestseller. You can do so much.

Q But the best place to sell a book like that would be at an organization that had a particular interest --

A Well, an organization that would have an interest in it, --

Q Yes.

A -- although we did do mailings to those organizations, too, on direct mail-type.

Q How did --

A But we got a much better response than we did through groups, through a table at the event.

(A previously unmentioned document was marked for identification as Exhibit No. 8.)

BY MR. BAIRD: (Resuming)

Q I'm back to the negotiation of the amount that was going to be charged to the group. You have said--correct me if I misstate--that this letter would come to your office. It would have a date and time of the event --

A The --

Q -- and the amount would be filled in.

A The amount was pretty much decided generally by, I assume, Mike Mahoney.

Q Okay.

A Because he had a better grasp of these groups than I did.

Q Okay. So are you saying that he would not routinely call Gary Diamond, "he" being Michael Mahoney, and say, "Hey, Gary, I want to let this group -- I want to charge this group 4,000. Is that okay?"

A No. He had carte blanche to set the figure.

Q Okay. As your agent?

A Right.

Q And so, as a general rule, Michael Mahoney decided the amount that --

A Yeah.

Q -- the people would pay?

A The only time they would call me would be if someone wanted a free talk if it was a charity, a college, or something. Then they would have them call me and I would tell them that it was fine with me, but they would have to get in touch with the Senator's office.

Q Okay. Let me ask you to flip over here on Exhibit Number 4. Go to about Page 3 or 4 for me. Let's

Q Obviously speaking of future agreements to provide something in the future, I assume that your answer -- I mentioned Dave Durenberger. I assume that your answer would be the same as to there being no agreement for future --

A For money or anything else in the future to either him or any of his --

Q Spouse, dependents?

A -- family or trusts, --

Q Trusts?

A -- foundations, anything ever.

MR. BAIRD: Okay.

Do you all want to take a short break? Gary?

THE WITNESS: It doesn't matter to me.

MR. ABNEY: Let me ask you a couple of questions while you're --

MR. BAIRD: Okay. Go ahead.

BY MR. ABNEY:

Q Refresh my recollection. Did you ever sell any of the books to the organizations before which the Senator spoke? Did you ever make an effort to?

A Only insofar as in the letters.

Q Uh huh.

A The books were available if they wanted them, yeah. But I never myself went to anybody and said, "You've got to buy 100 books" or "You've got to buy 1,000 books" or "You've got to buy" any books, for that matter. The only time we approached them was in the letter.

Q But these were all --

A And if they --

Q I'm sorry.

A And if they did not answer, they were never approached.

Q And in the main, these were organizations that would have an interest in the subject matter of the book?

A You would certainly think so.

Q So they would essentially be good potential purchasers of the book?

A Yes.

Q But you never specifically asked any of these organizations to buy the book?

A Except insofar as the letter.

Q And --

A Well, also in the direct mail campaigns. They all got them.

Q Okay.

A Yeah, we did promote it to them. But as far as the speaking arrangements went, no, we did not.

Q And as far as you're aware, no one on the Senator's staff made an effort to sell books in connection

Q But, in fact, you never -- you really never proceeded to attempt to effect sales at those entities once -- after the letter was written, they never set up, as far as you are aware -- or did you in any of the events, many of the events, or a few of the events, set up these booths and have a Master Card machine there and an American Express machine there, someone there to actually sell the booths?

A We did on occasion where we could get someone from the organization to do so.

Q Where you could get someone from the organization?

A Someone from the organization he was speaking before.

I never asked Durenberger's people because I didn't think that was legitimate.

Q Uh huh.

A And I never did it myself because it cost me more to go out there than I could possibly sell in the number of books, air fare and hotel, or to send somebody.

Q Do you recall --

A It just wasn't financially feasible.

Q Do you recall any of the organizations that you specifically --

A No. I don't know which of them. There were quite a few that did do it for us.

BY MR. BAIRD: (Resuming)

Q Set up the booth?

A Yeah, set up a table with them. And I would ship out some books UPS. And they would have them there.

Q Did they ever send you money back --

A Yeah.

Q -- from the sales?

A Uh huh. Uh huh. And then they would send the books they didn't sell back, too. But there was never anything where we'd send them 1,000 books and they'd send us money and kept all the books and threw them in the toilet or something. It just -- we did not sell bulk books.

BY MR. ABNEY:

Q So in terms of these appearances being an effective way to promote the sale of the books, they were really not very effective at that, were they?

A In total numbers, probably not, but we didn't know that until we tried it.

Q When did you figure that out? You were in a two-year cycle here. How far into it were you when you realized this wasn't going to work?

A Well, we --

Q Or did you ever --

Q Yes.

A We might have.

Q I think so.

A I don't recall, but it's possible.

We definitely had the book deal at the University Club. And I know Penny wasn't there because that was at the time that she had thrown him out of the house.

Q When you would see him at things like the University Club and -- did you go to the book signing at B. Dalton's here in town?

A Yeah. I was over at the one in City Center.

Q You never had -- are you telling us when you would see him at times like that you never had occasion to talk to him?

A Talk money? Never.

Q And to mention, you know, "Senator, you know, I know you're going to make all of these appearances over the next two years," and nothing like that?

A No.

Q You never talked about that at all?

A Well, first of all, you never could get near the guy. As soon as he was out there, there were 20 million people around him, and you can't talk business anyway, even if you wanted to. And no. Any business I ever talked, I talked to Mahoney. I never talked to Dave about it.

A Well, I just -- I don't think I thought of it one way or the other. I think we -- that's why we did the health book, because all of a sudden we realized that he's speaking to mostly health audiences, --

Q Audiences?

A -- other than the military. And that's why we did the health book. Because, yeah, it would look a little silly talking about health and then holding up "Neither Madmen Nor Messiahs," except insofar as nuclear war would, I suppose, be a health topic.

Q You never had an occasion to discuss the second book with the Senator?

A I never discussed the first book with the Senator, really, other than my original idea. Once they said they liked the idea, it was all with either Tom Horner or the Press Secretary, or somebody. I never really discussed anything with Dave, period.

BY MR. ABNEY:

Q When you decided it looked a little silly for him to be holding up the "Neither Madmen Nor Messiahs" at an appearance before a health group and so a decision was made to write the health book, who did you talk to about how silly it looked for him to be doing that?

A Well, I was just saying it would look silly. They must have realized that, and that's when they said we many times over lunch and --

Q Over this issue?

A Well, just on the books, period.

I can't tell you how many, but I would say certainly at lunch, 4 or 5 times; at other election deals, where we would -- they're just more bullshit than talk about it, 10, 15, 20 times, somewhere.

Q But you had constant telephone communication with Mahoney or with an aide in his office?

A Oh, on the scheduling with the aide.

Q Did you --

A With someone in his office, not necessarily with him.

Q How do you and Mahoney get along personally, as far as personalities? Do you all have a problem or --

A I have no problem with him. If you want my personal opinion, I'll give it, but I don't have -- I'm not fighting with him or anything. I just don't think he's a very good attorney. And I wonder why Dave uses him, and I wonder why I'm sitting here. That's why. Because he was supposed to keep this legitimate.

Q On the setting of the fees, did you at one time tell us--maybe it was in the first interview or the first part of this--that it was your understanding that the maximum fee for speaking that could be charged was $2,000?

Q Okay. And you did have someone who worked with you at that time, Pat Hoilland?

A Pam.

Q Pam.

A P-a-m. Yeah.

Q And would she have been the person that did this?

BY MR. BAIRD: (Resuming)

Q The billing, I thought you had said was -- the billing that was done was the third page of Exhibit Number 7.

A Almost all of the billing was done out of Mahoney's office. On a few occasions where we were having -- where we couldn't seem to match up checks and we couldn't -- we weren't sure if they had paid or not, I did have Pam try and check it out. They were very few and far between.

MR. ABNEY: Okay.

BY MR. ABNEY:

Q Did you understand as the appearances were being generated and recurring that, in fact, the requests that were going into the Senator's office were not requests for the promotion of his book, but simply requests for the Senator to make an appearance, a typical honorarium appearance?

A Well, I think the people that asked for him to overriding deal, and I did want to get a publishing company established.

Q Uh huh.

A So the more -- the wider range we went, the more people that knew about us, the better. Then I might be able to sign up, you know, other congressmen, other people in government, and such; in other words, make a success of this and it could become a -- it could have become a fairly decent publishing firm, --

Q Uh huh.

A -- assuming it had been legal --

Q Would you --

A -- or was legal or is legal.

Q How would you rate the importance in terms of what you were seeing occur here? Was the most important thing to you becoming a publisher? Where did the income generated to you fall in this spectrum?

A The most important thing to me was to establish a publishing company because the income would obviously be greater with a more successful company with more people involved. The more authors, the more beer.

To the Senator, I believe it was raising the funds to publish the books. I think that was more important to him than the fee, because he just doesn't have the money to publish a book. He can't -- I guess he can't

A I know that.

Q 5,000 is sort of a break-even figure, is it?

A A break-even on a figure.

Q Yes. And --

A On a small run.

Q Yes. Okay.

A If you're going for bigger runs, you could have a 50,000 break-even.

Q Oh, okay.

A It just depends. And it depends on the type of book, too.

Q But in the 5, 10 thousand range, you don't get any price break, really, but you get --

A Not much either way.

Q Okay. It wasn't worth the difference.

How did you market the second book?

A Mostly direct mail. We got lists of hospitals, lists of insurance companies, lists of doctors, lists of --

Q Who came up with the idea of marketing "Prescription for Change" by direct mail?

A Myself.

Q Your idea?

And how did you execute that idea?

A I bought mailing lists from Dun and Bradstreet in the field, in the health fields.

that was our major mailing.

Q And did you tell him who the author of the book was? I mean, do you have to give him that kind of information before he makes --

A Well, I'm sure --

Q Does he advise you on --

A Well, I'm sure I told him, but I don't think that -- no. They're just selling mailing lists.

Q Okay.

A The subject matter was important to them because they've got to figure out the best mailing list.

Q But, I mean, does he advise you and sort of help you pick the right audience to mail to or is it --

A Yeah, he did.

Q -- something --

A Yeah.

Q Okay. Did anyone from the Senator's office or from Michael Mahoney's office give you any instruction on which groups or organizations --

A No.

Q -- to target with the mailing?

A No, no. In fact, they never had a single thing to do with it.

Q Okay.

A I think I sent them a letter telling them what I

Wilson
5-24-89
45 pp.

UNITED STATES SENATE
Select Committee on Ethics
Washington, D.C.

- - - - - - - - - - - - - - - - - -x
In the Matter of: :
Preliminary Inquiry concerning :
Senator David Durenberger :
- - - - - - - - - - - - - - - - - -x

Wednesday,
May 24, 1989

Personal Interview/Deposition of:

GARY LEE DIAMOND,

a witness, called for examination by counsel for the Committee, pursuant to notice, commencing at 9:38 a.m., at 4504 Excelsior Boulevard, Minneapolis, Minnesota 55416, before William J. Moffitt, a court reporter, when were present on behalf of the respective parties:

APPEARANCES:

On Behalf of the Committee:

VICTOR BAIRD, Esquire
Counsel

Exhibit 97

first meeting here, that -- and do you recall telling me that it was your understanding under the agreement with the Senator that, "The Senator would do the best he could for you." Do you recall telling me that?

A Yes.

Q Would you explain what you mean by that?

A Well, he'd make as many appearances as he could to get us the necessary money to publish another book.

Q Okay. Publish another book -- any other purposes?

A No, except in so far as we wanted to make a profit on it if possible, of course.

Q And how did you arrive at that understanding, that the Senator would do the best that he could for you?

A With his attorney, Mike Mahoney.

Q Okay.

A Who was my main contact.

Q Okay. Is that to say that you and Mike Mahoney never reached a firm understanding on the exact number of appearances that would be made?

A No, there was never anything on an exact number that I ever recall.

Q Okay. Did he ever discuss with you the Senator making as few as 12 appearances a year?

A No.

Q You never recall hearing him discuss that or mention

$3,000. Just a small box ad costs that much. So you really, at $40,000, $50,000 you aren't even doing a good promotion job. But you could do a passable one in Minnesota at least.

Q Okay. So you did -- You needed that much money plus enough money to pay --

A To make a profit then everything else was in addition to that.

Q Right. And you were committing yourself to pay the Senator, were you not?

A Yes.

Q Okay. So you needed --

A In order to pay him, you would need then another $50,000 at $12,500 a quarter.

Q Yes. Did you and the Senator's attorney, Michael Mahoney, reach an understanding as to that amount that was to be paid the Senator?

A Yes.

Q Okay. And that was?

A $12,500 per quarter.

Q Okay. Did anyone ever tell you that the first payment under that contract or agreement would not be due until speaking appearances had generated enough money for you to make that payment?

A No.

Q That was not part of your understanding?

its ruling?

A No, because I thought we had the rulings and I thought they protected us.

Q Okay. And you don't recall that idea being discussed?

A Not with me.

Q Okay.

A Since then I have found that they apparently did go back, in Washington, I guess, to ask. Hadn't they? Or to the Ethics Committee anyway.

Q Okay.

A But the Federal Election Commission ruling is the original one and never asked for another one.

Q Okay. Have you had any conversations with the Senator about this matter in the last five or six months?

A No. No, nothing.

The only conversation I've had with him in the last five or six months -- and not a conversation note -- was on some work with the ROTC here in Minnesota. I haven't discussed this with him, or with Mahoney. We haven't heard from him in over a year, I believe.

I had one conversation with the Senator's new aide, who took Doug Kelley's place.

Q Bert McKesy?

A Yes. But that was only for about two minutes. He

A To me, myself. Nothing ever went to the Senator or any of his people for transmission to him. All the money that we raised came to me. The only money he got, in any form whatsoever, was the $12,500 quarterly.

Q All right. So some of the checks that came in though on the Piranha Press are as a result of the Senator's speaking engagements, may have been either spent directly by you or put into your personal account, as opposed to the Piranha Press account?

A No, I would think they almost all went into the Piranha Press account. When I say almost all, I believe all of them were deposited initially into the Piranha Press account.

Q Okay.

A I don't really remember any going or being endorsed over. I could have, but I don't remember doing it. I could have endorsed it over to my other accounts, but I don't recall doing it.

Q Let me ask you to look at Exhibit Three. What I would do, I would like to leave you a copy of it. There is no reason you should have any familiarity with this because it's an exhibit that I just put together. And ask if you can find any records, either in your personal account or in Northwest Beverages, Inc. account that would help us locate checks that came from these organizations in these amounts or at least we have reason to believe that there were checks. It may be that some --

(Hands Exhibit to witness.)

THE WITNESS: They all look like --

MR. BAIRD: -- of them got canceled or something. But we can't tell whether or not --

THE WITNESS: And the problem was we had trouble telling at the end. There were some we never did find because the checks came from different places and different names. We had a lot of trouble putting them together with the speaking engagement.

MR. BAIRD: Okay.

THE WITNESS: But I am almost 100 percent sure that none of these would have gone directly into either the Northwest Beverages Journal account or my own account. They would have all been deposited in some form or other, if I got them, into the Piranha Press account.

MR. BAIRD: Okay.

THE WITNESS: So either these are cancellations or they came in under other names. We deposited them even if we didn't know where the hell they were coming from. Then we tried to check back. But at the end, we ended up with about 20 checks, I believe, written down that I was still trying to track. But when it ended we ceased trying to track them.

MR. BAIRD: All right.

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110 pg
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UNITED STATES SENATE
Select Committee on Ethics
Washington, D.C.

- - - - - - - - - - - - - - - - - x

In the Matter of: :

Preliminary Inquiry Concerning :
Senator David Durenberger :

- - - - - - - - - - - - - - - - - x

Suite 540
Embassy Suites
425 South 7th Street
Minneapolis, Minnesota 55415

Friday,
April 28, 1989

Personal Interview/Deposition of:

DONNA HANBERY,

a witness, called for examination by counsel for the Committee, pursuant to notice, commencing at 8:12 a.m., before William J. Moffitt, a court reporter, when were present on behalf of the respective parties:

APPEARANCES:

On Behalf of the Committee:

WILSON ABNEY, Esquire
Staff Director and Chief Counsel

VICTOR BAIRD, Esquire
Counsel

HOUSTON FULLER
Office of Special Investigations
General Accounting Office

Exh 44
[illegible]

DIRECT EXAMINATION

BY MR. BAIRD:

Q Why don't you tell us who you are and where you're employed, your occupation, and that?

A I'm Donna Hanbery. I'm a partner in the law firm named Mahoney, Wally and Kelly, formerly named Curtin, Mahoney, Carnes, and Wally. And I've been employed there either as an associate attorney, clerk, or partner for the last 12 years.

Q Okay. In 1984 were you a partner at that time?

A Yes.

Q All right. When did you first become involved in -- if you did become involved, in drafting a contract for Senator Durenberger and between the Senator and his publisher?

A Since you gave the year 1984, I am assuming it is 1984. I remember it was in the fall, end of the year. And it would have been the same year as shows up on either the typing code or dates on various documents that I know you and I looked at before when we talked about this. And --

(A previously unmentioned document was marked for identification as Exhibit No. 2.)

MR. BAIRD: Let me show you Exhibit 2. It has --

Multi Tower.

I don't believe I ever had any kind of conversation other than meet the Senator, shake his hand, really at any time prior to doing this work and even throughout doing this work.

The only conversation I ever had with him was when the FEC notification of either a hearing or meeting on it and he called our office and couldn't get a hold of Michael Mahoney. That was the first time I think I ever had any substantive talk with him about anything before, during, or since.

Q He was a client of someone else in the firm?

A Michael Mahoney, who has been, I think, a friend, counsel, adviser to the Senator since he first ran for office. And that was something that was well-known through the firm. And Michael was always very proud of it.

And it may have been on one of those occasions when Michael had the Senator in the office that it was "Well, do you want to meet the Senator?" that I would have met him in the past, but nothing sticks in my recollection.

Q Now did you come to be involved in drafting the contract for the Senator?

A Michael Mahoney asked me to look at a couple of questions relating to publishing agreements and copyrights and the structuring of an arrangement where the Senator could both make speeches and have a royalty agreement with Gary Diamond and Piranha Press.

And we -- again, I don't specifically recall the year. 1984 makes sense. It was when we were in our new building. I can remember in the fall of that year, Michael saying "Do you have some time to help me out on some things?" And he gave me a number of projects to look into relating to this particular transaction.

Q Yes. What information did he give you, if you can recall?

A Okay. Well --

Q And you can feel free to refer to Exhibit 2 and your notes.

A Well, going primarily from my memory,--and obviously my memory is somewhat refreshed since you and I talked about this and I pulled these documents out, but I really haven't made an effort to read all the documents or put it real specifically in mind--Michael had a couple of issues that he wanted me to look at for the Senator.

At that time I believe a book had already been published and was in the B. Dalton bookstore, on defense issues, some kind of white paper that the Senator had written and that Diamond had published as Piranha Press. And I think it had been out for a couple of months.

There were two issues that come to mind that

Michael wanted me to take a look at. One of those was the agreement that Gary Diamond,--who, again, I never met him, but I was told Gary Diamond is Piranha Press--wanted to have with the Senator, was an agreement where the Senator could make appearances to promote the book, give speeches, what have you for Piranha Press, as well as Piranha Press having the rights to this book. And they wanted to have some kind of agreement like that, but they wanted to make sure that it passed muster under the various election laws, under the various campaign contribution laws, under the honoraria limitations. And so that was one issue.

There was, of course, related to that the issue of: What should the contract say? They had a, as I recall, sort of a gentlemen's understanding that if it was legal and they could do it, that Gary wanted to be able to pay the Senator some amount of money for the book and for making appearances, but they weren't going to have the Senator start doing that or sign a contract until we as a law firm said, "That's okay. Yes, you can do it."

The second issue that I was asked to look at was a copyright issue. The book had already been published, and the copyright was, I think, in Piranha Press' name or Gary Diamond's name, and the Senator wanted the copyright to be in his name as the author of these materials. So I was asked to look at: What do we need to do mechanically to fix that?

Q Okay. Is this all information that Michael Mahoney gave you at the initiation of the project, from your point of view?

A Yes.

Q Okay. And did he tell you at that time that there was an existing agreement between the publisher and the Senator?

A As I understood it, there was sort of a gentlemen's agreement that was "Yes, I'm going to publish the book." I mean, the book was, I think, out already.

Q Yes.

A "And if we can do it, I want to be able to pay you for your book and for making some appearances, but you," "you" meaning the Senator and your attorneys, "have to tell us how to do that if it's okay. And subject to something like that being okay, then we'll work out the exact numbers, the number of appearances," et cetera. And they were both all right with doing that, again, subject to us saying "Yes, it's okay."

And then Gary Diamond also had counsel that I later talked with that had to sign off on it on behalf of Piranha.

Q And who was that?

A Sam Stern.

We certainly never held ourselves out as having any real expertise on this matter. So I'm not aware of any work we had done in the past.

Q How did you proceed to research the project?

A I went --

Q Could you just go through that with us?

A Yeah. I went to the Hennepin County Law Library. And I believe my research involved looking at something -- I think there was a reporter on the subject, like a "Federal Election Law Reporter," or something like that that made my research project considerably easier.

This was not a three-day research project. I think I spent maybe a half a day or a day at the library and, quote, "lucked out." I can remember finding materials. It seemed on point fairly quickly as opposed to sometimes you flub around for days even trying to find something on the subject.

I remember most of what I ended up pulling related to the whole honoraria/stipend issue. And that was what I decided was sort of the main issue.

I believe when I looked through the file, and refreshed my memory after talking to you before, that I had also started looking for things relating to how much, if any, dollars received could be given to charity and was there any issue -- were there going to be issues of this being a proper or some kind of a legal campaign contribution. And I think, with regard to the campaign contribution issue, I very quickly decided that that was a non-issue, that this was a straightforward business arrangement. And I did not do any exhaustive or further research on that. But I recall that was one of the things that I started out looking at.

Now, whether it was Michael Mahoney directing me to do that or that seemed to me to be identified in my research as one of the issues, I really don't remember. And there's not a lot in the file in it, but there was enough in the file for me to go, "Oh, yeah. I looked at that, too."

Primarily there seemed to be the main issue of where the intention of the parties was to have a combined royalty agreement and the Senator making appearances was: Could they have an agreement where he was paid to make appearances? Was this going to run afoul of any of the honoraria limitations? And I pulled some FEC opinions on that type of transaction.

Q So one issue you identified -- let me see if these notes -- if you would look at Exhibit 2, the materials you previously identified as appearing to be copies of the material you provided to me earlier, and see if the -- to do checklists -- tell me if that was prepared what was said. The notes really are just to give me a clue of where to go from there.

If something's ever real, real important, I guess I would follow it up with a confirming letter or some formal memo.

Q Okay.

A But this, again, I'm pretty much just reading from my notes and trying to recall.

The next point on here is "Work directly with Gary, work out copyright, assign contract rights to Piranha." I guess that's consistent with the fact that there was this copyright issue where Piranha, or Gary, was shown in the book as having the copyright rights or having the copyright. And what we wanted was for Dave Durenberger to have the copyrights and to assign those rights, then, to Piranha.

The next bit of writing is "Structure a contract with Piranha where he does promotion for a fixed fee." That, again, was part of the project, was: Could there be a fixed fee that covers both the book as well as promotions?

And then as we seek an advisory opinion, my recollection of how all this fitted together was that it was me recommending to Michael Mahoney that we get an advisory opinion on these issues. And although the way this file is here the research I did is towards the bottom of this file, my recollection of how all this took place was I went to the library pretty quickly after I talked to Mike and got the research on this and came back and said, "Here's what it looks like. I think, to be clear on this, we should get an advisory opinion from the FEC on it, because it's not something that I want to be saying of my own accord as an attorney that I'm 100 percent sure of."

I don't see this so far in my notes, but I think fairly early on in the discussion Senator Durenberger had asked for his Committee or somebody who worked for him. I was getting the impression from Michael that whoever we were working with on behalf of Durenberger was saying, "We want you, your law firm, to say -- to bless this transaction, that this transaction is okay."

And I think initially they said, "Can you give us an opinion on this?"; which attorneys, where there is a real clear-cut issue, frequently will say, "Okay. It's our legal opinion this is how to structure it."

And it was my recollection when I went to the library, that I was to see: Okay. Can we give an opinion on that? And I fairly quickly came back and said, "This isn't so clear-cut that I would want us to sign an opinion that says, 'Yes. This is absolutely, positively how you do it.'"

Q And on what issue is that that you're talking about the opinion? You had identified three: the contributions and you -- how much could go to charity. You resolved that rather quickly.

A Uh huh.

Q And what was the second issue that was resolved in the --

A Well, I think it was the whole --

Q -- copyright assignments?

A Yes. The copyright assignment wasn't an issue. I think it was a matter of the various federal election laws as they related to the proposed agreement with Piranha, which was the whole transaction, everything from doing appearances to promote the book, doing appearances, doing speeches, getting dollars from Piranha Press, the whole transaction, which was at that time very loosely structured as: Can there be a transaction where Piranha Press pays dollars to the Senator for the book and for promotional appearances and for speeches?

Q Yes.

A And can that be done? And if that can be done, fine. They'll go do a contract on it, and they'll need to work out the dollar amounts, but they aren't about to do that until you say -- until we say it can be done.

Q Okay. And that was the issue you identified as

Horner was saying, "Hey, whatever Piranha/Diamond wants to do on the book, we're prepared to do. Get that information from them." It was not a matter of Tom Horner saying, "Oh, this is the way the deal's going to be. And here, I'm giving you instructions." It was sort of "Get that information from the Diamond/Piranha people and their advisors."

And when I called -- and I think I did call Gary directly and found out that he did have an attorney, and that's when I talked with Sam Stern.

Q Okay. Did Sam provide you with any information that you can recall or any [illegible]ts?

A I don't think I ever got anything from them other than the fairly loose outline that their agreement was to pay some kind of fixed fee for "X" amount of appearances--and that was never specified to me--and for the right to publish and sell the book if that was legal.

Q Was it your mandate during this process to negotiate the terms of the contract with Gary Diamond and his lawyer, Sam Stern, or to reduce what you understood the agreement to be to writing?

A The letter.

Q You didn't see yourself in a position of negotiating --

A No.

payment, which seemed to be, as the attorneys say, the "spotted dog," the main issue to focus on here.

Page 35 of the -- I guess it's Exhibit 2 are phone notes of a conversation that I had with Gary Diamond. Okay. This is the conversation I think I was recalling earlier. This is dated September 20th. The first name on here is Sam Stern, which is consistent with what I recalled of Gary giving me the name of the lawyer that he had representing him. Then there's a note of September 25th that I talked to Stern, told him the contract was coming. He wants the advisory opinions we examined.

Page 36 is a memo to me from Bev Austin, who is a legal assistant in our office. This is a note on what needs to be done to get the copyright assignment matter straightened out. This is dated September 25th.

A note to her from me is on Page 37. This is a memo where I asked another question relating to this assignment.

A duplicate copy of that is on Page 38.

39 is another internal memo on copyright assignment.

So is Page 40.

So is Page 41.

42 --

Q Do you know if as a result of your -- you much, "Hey," you know, "you guys go ahead and do it" and, you know, "I want to see what your work is." It was kind of the capacity of "I want to review what you've done and take a look at it, but it was not -- again, he wasn't negotiating either and saying, "Oh, no, no, no. It needs to be done this way." It was, I'm sure, a brief conversation.

Q So you and Sam Stern were not negotiating --

A No.

Q -- in terms of the contract?

A Not at all.

Q Had the discussions at this point, as far as the Federal Election Commission opinion, were -- whether or not to get it -- had there been any discussion at this stage of: What information should we put into the request to the Federal Election Commission?

A No. That was really never discussed. That was me deciding what should go in it. To the extent there was discussions on it, it was me reporting back to Michael Mahoney, as the person who gave me this project, that "Here's what I found. Here's what I'm comfortable doing or I think we should do because I'm not 100 percent clear that anything like this has ever been done."

The opinions I looked at dealt with, oh, television and radio appearances, I think. There may have been a book contract in there. I really don't remember, but nothing quite like this had I run across before. And since our instructions from day one were, "Hey, folks, you've got to sign off on this. We want this to be right. We're not even going to do it unless you tell us it's okay."

I wanted to be 100 percent sure that what we were doing was all right. And it seemed the only way to do that was to submit the question to the FEC because I did not run across anything in my research that I could hold up and say, "Aha. Here's the Bible on this issue."

Q Did you run across anything in your research that told you what the FEC expected in the opinion, the advisory opinion, request, what sort of factual statement was required?

A Not that I can recall. It may have been in the Reporter I saw or the Reporter I reviewed that the Reporter printed the request as well as the response, but I don't specifically recall.

Q Do you recall doing any research on the scope of, or the extent to, which one receiving an advisory opinion from the FEC could rely upon the opinion received?

A I don't think I ran across anything dealing with that, and that was -- I mean, it wasn't like you were talking about 38 shelves in terms of a body of law here.

A I don't think I ever reached that conclusion of: Oh, I'm going to leave this out. If you look at the letter I sent to the FEC, the letter is about a page and a half that --

Q Let's go -- take it to answer this one, the draft, anyway. Do you want the original?

A Right. I think the draft and the original are pretty similar.

-- that outlined in pretty bare bones form what the arrangement was to be. It did reference that there was to be a contract. It did reference the various unusual situation of being paid quarterly installments over a two-year period rather than a set royalty. And I would be surprised if there's 50 words, maybe 100 words, going into the specifics of a contract that was later 3 pages.

It was -- I guess my thought that I would describe the transaction and our conclusions from it and that if the FEC thought more information was necessary about what an arrangement that was clear on my letter on its face to be unusual, that they could come back with specific questions. And had I started trying to highlight what was unusual or -- I probably would have had a three, four, five-page letter and still probably would have omitted something.

Q Before I get you too far away from the honoraria limitations specifically other than to throw out sort of some key words of "Here are the concerns we have." And at this point in time it was, "The parties would like to do a deal like such and such. Can they do it? Here are the areas of concern we have." And as hindsight has taught us, a lot of time and attention ended up getting spent on honoraria.

When he first outlined the project to me, I don't recall if we talked about that other than as a key word.

Q Yes.

A I do know that he told me that the Senator was not a wealthy man and was interested in making some dollars and that one of the reason that Gary Diamond and that Piranha had even talked about this was as an additional way that the Senator could earn some revenue.

Whether it was at this time or later on that I learned that in the past the Senator had made substantial amounts of revenue giving speeches, I don't know. I know that now. I couldn't tell you if Michael told me that at that time. I suspect he did not because it was "The Senator would like to be able to make some money. Here are the issues," blah blah blah, "You tell us if we can do it or not."

Q Did Gary Diamond ever tell you what his, or his attorney, Sam Stern, ever tell you what his, goal was in published the agreement -- or published the book in, like, July of '84.

Q Yes.

A And when you and I visited the first time, I think they made the agreement effective as of the date that it was actually published and clearly signed it much later than that because they weren't about to sign it with the appearances until after the FEC opinion was done.

Q Yes. And what is the purpose of deleting the date from the copies to be signed where the effective date is different?

A I guess just to get rid of any inconsistency in the agreement.

Q Okay. But you don't recall ever having seen Page 3 of Exhibit 2?

A Other than in that blue bound booklet that I told you about.

Q Yes. And you think that's it or could that be a different one?

A I have no reason to think that --

Q You've never seen it in --

A -- this is not it.

Q Okay. Have you ever seen that in its original form?

A I might have seen the original in that bound letter from him back to me saying, "Do this. Do that." So I'm guessing that the version that I had of things was pretty much on the money by the time I sent it to him. And he didn't change it.

Q The role that you played in drafting the agreement and the opinion to -- the request to the FEC, you have described as one of really scribe. You were not involved in negotiating the terms of the agreement. You were, as I understand it, relating -- trying to put into writing what other people told you the agreement was.

Now, from the Senator's point of view, who was telling you what the agreement was?

A Well, I'm guessing who Michael talked to, but Michael told me, "Here's what the parties want to do." And that was my assignment on the project with this sort of bare bones outline of "They want to be able to generate some dollars for the Senator where they sell and promote his book and he makes some appearances." That was about all I was working with.

Where Michael got that information from the Senator's office, I don't specifically know other than he did direct me to talk to Tom Horner, who gave me some specifics, as reflected in my notes.

I know from day one, it was 150 percent clear that our instructions from the Senator were "Make sure that this is okay. I'd like to do this, but I'm asking you guys to keep my skirts clean. Make sure that whatever we do is kosher, it's okay. You give me an opinion on it. You tell me it's all right."

So when I first went to the library, it was with the idea: Would we give some kind of opinion letter?; and that I may have had some discussion with Tom Horner or Michael as far as: Would we be able to say, "Yes, this is how it can be done" or "This is an okay deal"? And I came back from the library and said, 'It's just not that clear-cut. We should get an advisory opinion."

Q Did Michael Mahoney understand and know during the time you were drafting this agreement that you were not, quote, "negotiating" terms with either Sam Stern or Gary Diamond?

A I assume so. I mean, I didn't come back and, you know, give him running reports of, "Yes, they're saying okay to everything we've talked about."

I think it was always Michael's understanding that the broad outline of, quote, "the deal" without the dollar amounts, without the number of appearances, without the critical business deal had been agreed to in principle. And those were the matters that once the broad outline of the deal was okay, they would fill in.

Q Would he have had any reason that you know of to sure that you could give a legal opinion as to which it was. You felt like you needed to go to the FEC to get an opinion. Did you give any consideration or was there any discussion at that time, between you and Michael Mahoney or anyone else, as to engaging someone who had dealt with the FEC on prior occasions?

A Well, again, let me go back into your question a little bit. I thought, based on the research I had seen, which was not -- there was not that much material out there, that the arrangement they were talking about, which was, you know, like a couple of year contract for set payments, was pretty clearly a stipend arrangement rather than an honorarium. And I felt pretty comfortable on that.

But because I had never seen anything quite like what they were talking about, I thought we should get an opinion on it. And that was the extent of the conversations I had with Michael.

It didn't seem like it was that hard a thing to do to write to the FEC and request an opinion. I guess I wrongfully assumed that if we were breaking such new ground, that somebody at the FEC would say, "Oh, this is an interesting question. Let's talk about this. Give us some more information," that they would -- because much of this was all, it seemed, pretty new laws, some new rules, that they would tell us "This is further information we want" and that the experts were at the FEC and they would drive the bus if some things came up that they wanted to look further at.

In the research I did, you have elected officials from all over the country. There didn't seem to be like there was one law firm that was an expert on this or any established treatise. This all seemed pretty much new rules, new ground.

The one established area of expertise was within the FEC. And I wrongfully assumed that if what we were bringing up caused some concern, that they would ask for more information.

BY MR. ABNEY:

Q Let me ask: When you went back to Mr. Mahoney to discuss with him what your research yielded, did you talk to him? Did you tell him that what you understood to be the critical element of the advisory opinions that the FEC had handed down, the few that they had handed down, was a continuing relationship over time? Would that be correct?

A I think that was one of the conclusions I had reached, yes.

Q Did you discuss something along the lines of "Gee, Michael, it would even be possible for a public official, federal official, simply to sign an agency agreement so that he had an agent who collected the

UNITED STATES SENATE
Select Committee on Ethics
Washington, D.C.

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In the Matter of: :
Preliminary Inquiry concerning :
Senator David Durenberger :
- - - - - - - - - - - - - - - - - x

Suite 540
Embassy Suites
425 South 7th Street
Minneapolis, Minnesota 55415

Thursday,
April 27, 1989

Personal Interview/Deposition of:

THOMAS HORNER,

a witness, called for examination by counsel for the Committee, pursuant to notice, commencing at 9:06 a.m., before William J. Moffitt, a court reporter, when were present on behalf of the respective parties:

APPEARANCES:

On Behalf of the Committee:

WILSON ABNEY, Esquire
Staff Director and Chief Counsel

VICTOR BAIRD, Esquire
Counsel

HOUSTON FULLER
Office of Special Investigations
General Accounting Office

MOFFITT REPORTING ASSOCIATES (301) 350-2223

Exhibit 49

BY MR. BAIRD:

Q Tom, why don't you identify yourself for the record and tell us what you live and what your occupation is?

A All right. My name is Thomas Horner. I live at 4816 Roycar Road in Edina, Minnesota. I am in public relations. I own my own firm Himle Horner. For six and a half years, from 1978 through early 1985, I was Senator Durenberger's press secretary and his AA.

MR. ABNEY: Could you spell the name of the street on which --

THE WITNESS: Roycar -- R-o-y-c-a-r.

MR. ABNEY: And the first name in your firm?

THE WITNESS: Himle -- H-i-m-l-e -- Horner, Incorporated.

MR. ABNEY: Thank you.

BY MR. BAIRD: (Resuming)

Q As the Senator's Administrative Assistant, what were your responsibilities, Tom?

A My responsibilities were management of the staff and providing the Senator with assistance as he required.

Q Okay. Are you familiar with the fact that the Senator published a book named Neither Madmen nor Messiahs?

A Yes.

Q Are you familiar with the genesis of that book?

A Yes.

I don't recall. I would guess that I did, but I don't recall specific conversations initially. There were some conversations later on having to do with collecting some photos to dress up the book.

Q Uh-huh. So the information that you had about the -- whatever arrangement there was between the Senator and Gary Diamond came to you through the Senator?

A As I recall.

Q Okay. You never discussed with Gary Diamond what his arrangement was in publishing the book?

A I don't recall conversations.

Q Do you recall hearing the Senator discuss it, either with you or with anyone else?

A To discussion conversations he had with Gary Diamond?

Q Right. Or his arrangement with Gary Diamond.

A Yes. And again, the arrangement initially was to publish a policy book that would give broader audience to these issues.

Q What was your understanding about who was to pay for the publishing of the book?

A Gary Diamond was to pay.

Q Okay. And was there any discussion of royalties?

A No. The other discussion -- and I don't recall at what point this occurred. There was a discussion as to what

Q When did you -- Right up until publication?

A Yes.

Q Okay. When the book was published --

A Uh-huh.

Q -- what happened then?

A We had a reception to announce the book in Washington, along with some activities, both in Washington and Minnesota, to generate some news media coverage of the book.

Q Does September -- mid-September of 1984 sound right for the timing of that?

A Yeah, right.

Q Okay. What -- Did you have any involvement in arranging the book appearance in Washington?

A Yes. In scheduling the event, one of my duties was to work with the Senator on his schedule and so certainly I would have done that, to work with the support staff, to make sure that the arrangements were made to do those kinds of administrative activities.

Q Did there come a time when someone brought to your attention a possible, or a proposed, agreement between the publisher and the Senator concerning appearances to be made by the Senator?

A Yes. Well, it was brought to my attention and I don't recall the specifically the chain of events. But it was brought to my attention that there was the potential in an arrangement with the publisher for the Senator to engage in promotional activities that would help promote the book, certainly, and would provide some compensation to the Senator.

Initially it was ill defined as to -- at least in my mind -- as to exactly what form that arrangement would take.

Q Who was that -- Who brought that to your attention, the potential for --

A Well, again, I don't know where it initially came from, whether it was conversations with Mike Mahoney and me or the Senator and me, or the three of us in one room. But at one point or another there would have been discussions in some combination among Mike Mahoney, the Senator and me.

Q Did the Senator instruct you to take any action in that regard?

A I suggested to the Senator that before anything occurred that we ought to get a legal opinion on whatever form this arrangement would take and he concurred.

Q Did the Senator tell you any of the ideas that he had about what form it might take?

A Not that I recall at that point. But again, it depends what time frame you're talking about.

Q At the very beginning.

A In Fall of 1984, I'm not sure that anybody was clear as to exactly how this arrangement would be defined. That the initial conversation was, is there an opportunity to accomplish all the goals and that is first and foremost to give broad distribution to the views, as reflected in the book.

And secondly, to enhance the Senator's standing in this area as a way of reinforcing the first goal and helping to accomplish that first goal in the same way that if the Senator wants to be an expert on any other issue he might go through a series of media activities and speeches and whatnot.

And then thirdly, would there be an opportunity to generate some income from this book.

And at some point, I or the Senator or -- well, it would have been either the Senator or I -- turned that over to Mr. Mahoney to say, these are the goals that we want to explore, is there a legal and ethical way to accomplish all three of them. We've taken care of the first one by producing a legitimate book that in my mind certainly falls within the appropriate purview of Senate staff. The Senator is undergoing some activities through more exposure in the media, through more activities in the Senate, to give him greater stature, but certainly this book might be an opportunity to enhance that.

Is there a way to ethically and legally accomplish the third goal? And that was turned over to an attorney to explore.

Q Okay. Did you talk with the attorneys about that?

A I'm sure I did. I don't recall specific conversations, but yes.

Q And what form did the proposed arrangement to generate income ultimately take?

A The form that it ultimately took was that the Senator would make promotional appearances to promote the book at various groups in Washington and elsewhere. And those groups would pay a fee to the publisher.

Q Is this something -- Is this an idea, having appearances at which the Senator would appear, is that one of the proposals that was suggested to the attorneys for them to come back with an opinion as to whether or not that was all right?

A My recollection is that that was initiated by the attorneys. Now it may be then that after the attorneys initiated that idea that -- then I certainly would have turned around to say, if this is your idea, or if this is the plan, please check it out.

Q The three-prong, three-part goal that you had, was that something -- are you what repeating what the Senator has told you there or is that Tom Horner's vision of what the goals were?

A No, I think we all concurred in those three activities as the goals.

Q Did the Senator ever suggest to you the possibility of him making appearances to promote the book as a way of generating an income?

A Not initially as I recall.

Q Uh-huh. When, if ever, did he suggest that?

A After the idea was presented. And again, it's my recollection that that was presented by the attorneys.

Q Okay. What was your response to that idea?

A To check it out.

BY MR. ABNEY:

Q What did he say to you? What did the Senator say to you?

A At what point?

Q In connection with that time frame we're talking about now.

BY MR. BAIRD: (Resuming)

Q When the idea came back and the suggestion was made that he make appearances for which the publisher would be.

A Right.

Q What was the Senator's response to that?

A The initial response was, let's check that out. He concurred with the recommendation that that be checked out. We then turned it over to the attorneys to say, please investigate this with whomever the appropriate body is and seek the appropriate opinion before we go further.

The attorneys did that. The opinion came back that it was an entirely legal arrangement and at that point the Senator accepted it and sometime in 1985 it was implemented.

Q Prior to your going back to the attorneys to have them determine if it was an appropriate way of proceeding, did you discuss the idea with the Senator?

A I don't recall that I discussed the specific idea. I did discuss the concept of using this book as a money-making opportunity for the Senator outside of collecting whatever royalties might accrue from the sales of the book.

Q And what was the substance of your conversations with the Senator on that?

A My concerns were two-fold. First, to make sure that whatever arrangement was defined was evaluated legally and checked out by the appropriate body. And secondly, I had some political concerns, concerns about the potential political ramifications of any arrangement.

Q Any arrangement which produced income or just any arrangement?

A Outside of what my limited knowledge of book publishing was that traditional royalties -- any arrangement outside of that. I raised concerns over the potential political ramifications.

Q And you raised those directly with the Senator?

A Yes.

Q What was his response?

A He acknowledged that yes, there would be some political concerns but believed that if the arrangement was checked out legally and if he had a legal opinion that he would accept that and move forward.

Q Which -- The attorneys you've been referring to I take it are Michael Mahoney?

A Principally, yes.

Q What was the relationship between Michael Mahoney and the Senator at this point in time?

A Michael had done some personal legal work for the Senator. I suppose as much as anyone, you would describe Michael Mahoney as the Senator's personal attorney. In addition, they also had a personal relationship; they were good friends.

Q Let me show you a document and see if you can -- This is Exhibit 2 which I had the court reporter label for us before you got here so it would shorten our time.

A Uh-huh.

(Whereupon, Deposition Exhibit No. 2 was marked for identification.)

BY MR. BAIRD: (Resuming)

Q Exhibit 2 and I want to show you page 11. This

this program took shape.

BY MR. ABNEY:

Q With whom would you have raised that?

A Probably the attorneys and may have raised it with the Senator as well.

Q But you have no recollection of raising it with either of them?

A Of specific conversations in which I raised it, no.

Q Do you have any recollection generally of raising that issue with either the Senator or the attorneys?

A No. No.

BY MR. BAIRD: (Resuming)

Q All right. Let me ask you to look at Exhibit 2, page 42, Tom.

A Uh-huh.

Q Take a look at that letter and the attachments that are with it.

A (Witness reviews document.)

(Pause)

THE WITNESS: Okay.

BY MR. BAIRD: (Resuming)

Q Tom, let's briefly identify the pages you've just read as an Exhibit. Tell me if I'm correct. Exhibit 2, page 42 through 48.

A That is correct.

Q Do you recall having received the letter that's addressed to you on page 42 from Donna Hanbery?

A Yes. Yes, I do.

Q Now, prior to the receipt of this letter, you had said that an earlier time when the idea was first broached of producing income other than simply royalties from the sale of the book, that you had expressed concerns to the Senator about his receiving such income. Is that correct?

A I had expressed concerns, to be absolutely clear about this, on two points. One, to make certain that any arrangement was evaluated legally and checked out with the appropriate authority.

Secondly, that any relationship around this book, involving anything other than traditional royalty payments, or what I understood to be traditional royalty payments, could have adverse political ramifications for the Senator.

Q And what did you identify those adverse ramifications to be?

A Specifically that a political opponent in the sometime in the ill-defined future would use them as a campaign charge.

Q In what way?

A That a candidate would suggest that the Senator was benefiting improperly from a sweetheart arrangement with a political supporter.

Q That attaching a copy of a proposed -- first a copy sending the same information to Sam Stern and a proposed letter seeking an opinion from the Federal Election Commission. Is that correct?

A Yes.

Q And a proposed contract or agreement, labeled Piranha Press, author-publisher agreement, preliminary draft. When you received this information from her, did you take any action at that point?

A I presume that I would have called her back to suggest that we needed to -- if it was okay with Mr. Stern, if he had signed off on it, that the letter ought to go into the FEC. I may have asked a question as to why the FEC as opposed to the Ethics Committee. I may have asked other questions. I don't recall specific conversations with her.

Q Now, the proposal that is outlined in the document labeled, preliminary draft, starting on page 46 here in Exhibit 2, as you read that proposal at the time, and as you read it now, it proposes that the Senator make appearances, and do you infer from the arrangement that the publisher -- the arrangement that's outlined there and from the document -- that the publisher will be receiving fees from the audience for the Senator's appearance?

A No.

MR. ABNEY: I'm sorry. Which document is this in in

Q Uh-huh. But at this point in time, you were aware, as you had told us earlier, I believe, that the Senator would be making appearances and that the groups before whom he appeared would be making payments to the publisher.

A Yes. Although it wasn't clear to me as to the extent of those payments and the emphasis was on the sale of the work.

Q Uh-huh.

A It was on proceeds from the sale of the book.

Q But now, the proceeds from -- You had earlier said, though, you were not real concerned about the money that he might get from the proceeds of the sale of the book.

A I wasn't.

Q That those would be royalties, right?

A Correct.

Q So that did not raise a question in your mind?

A No. What struck me about this arrangement is that instead of the author receiving royalties, all proceed from the sale of the book would accrue to the publisher, who then in term would pay the Senator a promotional fee.

Q Uh-huh.

A And again, it was my understanding that Gary Diamond recognized that this was an entree for him into book publishing.

Q Uh-huh.

Q And at this point you're not sure whether or not you knew that requests for appearances that came to the Senator's office would be passed on to the publisher for handling as promotional appearances?

A That's correct.

Q Okay. When did you become aware that that was the arrangement that was being proposed?

A Again, I don't recall the specific timing of that.

Q How about giving us a rough estimate?

A I wouldn't want to speculate on that.

Q When did you leave the Senator's office?

A In March of 1985.

Q Okay. Was it discussed prior to your leaving the Senator's office?

A Yes.

Q Okay. You don't -- You said, I think, that you don't know whether that was discussed or became a proposal before you had an opinion from the Federal Election Commission?

A Correct.

Q When it was proposed, the idea that requests coming into the Senator's office asking for him appear would be referred for handling to the publisher under the agreement, what was your response to that proposal?

A My recollection is to seek advice from the attorneys, to ask if this was incorporated in the opinion that had been requested from the FEC. And again, I don't recall if it was to say, is this incorporated in the opinion we've already received from the FEC or does the opinion that is before the -- the request before the FEC need to be updated. I don't recall the specific timing.

Q Uh-huh.

A But when I understood clearly what the arrangement to be, then my reaction was to verify with the attorneys that they felt confident that our request for an advisory opinion fairly reflected what the arrangement was going to be.

Q Uh-huh.

A And it is my recollection that the attorneys assured me that yes, in fact, the advisory opinion sought was on the basis of a fair representation of what the agreement would be.

Q And did you discuss it at this point with the Senator, Tom?

A Again, on the political concerns, yes.

Q Did the idea of transferring requests for appearances made to the Senator's office for handling by the publisher, did that raise any new political concerns for you?

A Well, it raised some additional concerns for me that I discussed --

Q With the Senator?

Q -- up to the limit --

A Correct.

Q -- and then proceed with the Piranha Press appearances?

A That is correct.

Q Let's turn back to page 47 of Exhibit 2. You notice the blank marks on numbers of appearances to be performed by the Senator and how much he was going to be paid.

A Yes.

Q Were you ever aware -- Did the Senator ever tell you how those blanks were filled in, if they were?

A No.

Q Did you ever discuss with him the possibilities of how these might be filled in, those blanks?

A No.

Q You never talked to him about how many appearances he might be committing himself for or --

A No, because during my tenure on the staff it was more important to get the opinion on the structure and the structure as presented to the FEC, based on the advice the attorneys had given me, reflected what the arrangement was going to be. So I was more interested in an opinion on the structure.

The appearances certainly would be something that the Senator and his staff would have to work out in the context of the rest of his schedule. The compensation was a matter for the Senator and the publisher to work out, as long as it had been determined to be an appropriate structure.

Q Yeah. In regard to it being an appropriate structure, I believe you said you raised with the attorneys, you think, the idea that they should be certain that the structure of the arrangement that was actually being proposed -- that is the referral of requests from the Senator's office --

A Yes.

Q -- and the payment by the audiences to the publisher, you tried -- you told them that they should be sure and ensure that the FEC opinion they thought was based upon a fair statement of that factual situation, is that right?

A Yes, that is correct.

Q Did the attorneys respond to your expressing that concern to them?

A My recollection is that they assured me that it was a fair representation.

Q You said you expressed reservations on several occasions to the Senator about some of the potential political ramifications of the arrangements. Did you express those reservations to the attorneys or anyone else involved?

A I expressed them to Mike Mahoney, yes.

point?

A That initially I believed that the publisher would pay the Senator for promotional work. That promotional work would entail appearances before groups and that revenue would be generated by the sale of books from appearances at those groups.

Q Okay.

A At some point later, I understood it to be that payment would be received by the publisher by the groups hosting the Senator.

Q And at that some point later, that would have been after the opinion from the FEC?

A That's what I'm not sure of -- the timing. However, let me say that it is my recollection that at whatever point that came, that it was reaffirmed for me by the attorneys that the opinion they had requested was based on information that fairly reflected the arrangement.

Q The arrangement being that audiences would pay an appearance fee to the publisher?

A Yes. That's correct.

Q And that referrals of honoraria requested appearances to the Senator's office would be referred to Piranha Press and would be used as the basis for an appearance to promote the Senator's books?

A Yes.

Q Did that strike you as something that was standard?

A It didn't strike me one way or the other.

Q You didn't -- You had no conversations with Mr. Mahoney or Ms. Hanbery about the rate of royalty payments?

A Not that I recall specifically.

Q Okay. Thank you.

A Uh-huh.

BY MR. BAIRD: (Resuming)

Q Tom, you said you had the concern -- can't recall exactly when it was -- about there could be some confusion between honoraria and the income that might result from these appearances. Did you express that concern directly to the Senator?

A Yes.

Q And what did he say?

A He shared the concern that it could be manipulated as a political issue. He felt confident, however, that he had taken all the right steps by receiving an opinion from the FEC and that while -- because it was a legal undertaking, because it had been explained to the FEC, because all the appropriate steps had been taken, that he would then be able to explain it should it become a political charge.

Q Do you know Chip Kahn?

A Yes.

Q He was the Health --

Whether he actually drafted original material or took speeches and passed that on to the writer, or discussed it with the writer, or took the writer's copy and edited it, or some combination of the above, John was clearly involved in the process of putting together a book.

Q With Bill Swanson?

A Yes.

Q Okay.

BY MR. ABNEY:

Q At the time you had your conversation with the Senator concerning the honoraria, potential honoraria problem that you saw, did the Senator mention any conversations that he might have had with any staff person from the Senate Ethics Committee?

A Not that I recall.

Q Did the Senator explain to you how he would explain the distinction between what he was receiving, pursuant to his Piranha Press agreement, and honoraria?

A Not beyond the point that he had an opinion what we believed to be the appropriate body that said it was a legal undertaking.

Q Okay. Thanks.

A Uh-huh.

MR. BAIRD: No further questions, Tom.

THE WITNESS: That's it?

ADDENDUM TO DEPOSITION OF Thomas Horner

DATE OF DEPOSITION April 27, 1989

Page	Line	Incorrect Wording	Correct Wording
10	14	discussion	discuss
13	25	a, the	delete "the"
24	19-20	recommendation fair	recommendation. It is f
27	20	term	turn
29	19	understanding	understand
35	20	my out	my way out
42	25	reasonable	reasonably
55	19	opinion what	opinion from what

CERTIFICATE OF DEPONENT

I hereby certify that I have read and examined the foregoing transcript of my deposition and that with corrections made by me, if any, the transcript constitutes a true, accurate and complete record of the testimony given by me.

(Signature of Deponent)

Sworn to and subscribed before me this 17th day of May, 1989.

TAMARA K. HARDY
NOTARY PUBLIC — MINNESOTA
HENNEPIN COUNTY
My Commission Expires Aug. 27, 1992

Notary Public in and for

My Commission expires 5/27/92.

Wilson
5-24-89
31 pp.

UNITED STATES SENATE
Select Committee on Ethics
Washington, D.C.

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In the Matter of: :
:
Preliminary Inquiry concerning :
Senator David Durenberger :
:
- - - - - - - - - - - - - - - - -x

Wednesday,
May 24, 1989

Personal Interview/Deposition of:

THOMAS HORNER,

a witness, called for examination by counsel for the Committee, pursuant to notice, commencing at 11:02 a.m., at 8300 Norman Center Drive, Suite 555, Minneapolis, Minnesota 55416, before William J. Moffitt, a court reporter, when were present on behalf of the respective parties:

APPEARANCES:

On Behalf of the Committee:

VICTOR BAIRD, Esquire
Counsel

Exh 5 + 100

your testimony and the one which you have read and signed?

A It is.

Q All right. Tom, after I read it I had some further questions --

A Yes.

Q -- that I wanted a little clarification on. Let's start on page 15, I think, and to some extent we might need to discuss the subject a little bit.

A Yes.

Q We're talking here on page 15, if I recall, about how you initially came to take the idea of promotional appearances -- Well, I'm not sure that that was the idea at that point. Let me go back and ask you that. The elements that the Senator asked you to discuss with the attorneys, what exactly did he ask you to discuss with them?

A Give me a time frame.

Q Okay. We're back, the book is being published. It's September, July, August of -- let's say, August of 1984 or July of 1984. The Senator has a book that's about to come out. He discusses at some point with you, does he not, some goals that he has regarding his books?

A Correct.

Q Would you confirm for me what those goals were again?

A Sure. Let me put it in a little bit broader context. That is, throughout the course of this whole process we had discussed -- we, the Senator and I and other staff members that was appropriate -- opportunities for the Senator to give a larger forum to his views on key public policy issues, including defense spending and arms control. The Senator had done that aggressively through a variety of activities, including speeches to a number of groups.

He was a Senator who invested a lot of himself in speeches. Not just going out and speaking for the sake of speaking, but to put some substantive thought into his speeches. So the books became a way to build onto that -- to take the thoughts of a Senator who was very involved in these issues, organize them in a book on defense spending and arms control as an outgrowth of the policy papers and then through the book give broader distribution to his views.

The second goal was to establish Senator Durenberger, then, through these different activities as an expert in that area. Again, to give the Senator influence over the resolution of these issues in the Senate.

And finally, the Senator looked at all of these activities to say, is there a way to generate income off of these activities and to do it legally and ethically.

Q Okay. Those three ideas, or three goals, were things that the Senator expressed to you as goals of his?

A Correct. Yes. That he and I had talked about.

Q Okay. The idea of making income, if it was legal and ethical, was the Senator's idea?

A Yes. I mean, it was an idea that he certainly concurred with. Whether it was something that I said to him, he said to me, initially, I mean those were certainly three ideas on which he and I agreed.

Q Okay.

A Three goals that he and I agreed to.

Q Okay. So it would be fair to say that one of the Senator's goals, if it was legal and ethical, if that could be determined, that he would, in addition to promoting his ideas and projecting himself onto the national stage as a leader in certain fields, to make money if it's possible?

A Correct.

Q Okay. That is the idea as I understand it, that he asked you -- he being the Senator -- to take to his attorneys for discussion.

A Correct. That's correct.

Q Okay. You took that idea to the attorneys and then, I think on pages 16 and 17, you say that the attorneys came back to you with the suggestion that yes, it may be possible for the Senator to make money through appearances to promote the book, where he is paid for those appearances by the publisher. Is that correct?

A That's eventually what happened. It's my public policy; would it help establish the forum that the Senator was seeking. We looked at those goals in relation to speeches as well as to this book, as well as to the opinion articles that he wrote, as well as to other articles that the Senator used to express himself.

It was only after those decisions were made by the Senate staff that speaking invitations -- the accepted invitation -- would then be turned over to the publisher to negotiate exclusively the financial arrangement.

Q Okay. That was the way you envisioned it and the way the Senator envisioned it?

A Yes.

Q Okay. At some point you, I believe told us, that you talked to the attorneys. I'm speaking now of around page 49. Am I correct here in stating that you're telling us that you talked to the attorneys to confirm that the arrangement which you've outlined was an arrangement which was within the scope of the FEC opinion that either was being sought or had been sought?

A Correct.

Q Okay. Which attorney did you talk to about that?

A It would have been either Michael Mahoney or Donna Hanbery, or both.

Q Okay. You don't recall any specific conversation with either of them?

A No.

Q But you are certain that you had --

A My recollection is that it was with Mr. Mahoney.

Q Okay. And in that conversation, as you recall it, did you specifically ask whether or not the process which you have outlined for handling the appearances and the referral of speaking engagements would be within the coverage or scope of the opinion that was being sought or had been sought?

A It is my recollection that I did have that specific conversation.

Q Okay. Do you recall whether or not you discussed with the Senator the fact that you had had this conversation with Mr. Mahoney?

A That I don't recall.

Q Do you recall if you and the Senator ever discussed the idea that the opinion from the FEC, that you should somehow confirm that that opinion would cover and encompass the kind of arrangements which you and he had contemplated and discussed?

A Yes. Yes, the Senator was very concerned and shared my concern that before any plan was implemented that he, as well as I, wanted to make certain that it was absolutely above board and that there would be no problem with it. For that, we relied on the attorneys to determine the appropriate agency with which to verify and receive approval of this plan. And that their description of it would accurately reflect the plan to be implemented.

As I say, the Senator also had that concern and we had those conversations relating to that.

Q Let's see if we can find -- What I'm looking for is, a letter was addressed to you, I think, from Donna Hanbery and the Curtin, Mahoney firm. Yes, I think this is the letter. Find out what exhibit we're in here. We are referring now to Exhibit Two of the transcript of your deposition of April 27, 1989. I want to direct your attention to page 42 of that.

(Hands Exhibit to witness.)

BY MR. BAIRD: (Resuming)

Q You have identified this letter, I think, and the attachments previously, have you not?

A Yes.

Q As being a letter which your received from the Curtin, Mahoney law firm and that letter, I believe, had attachments of a proposed Author/Publisher Agreement and a proposed Letter of Request to the FEC, did it not?

A Yes.

Q Do you recall whether or not you ever discussed with the Senator the proposed request for an opinion from the FEC?

A I don't recall specific conversations. But, yes, I would guess that I did discuss it with the Senator and went follow up on any questions he had or raise points that I had and make sure that we both understood exactly what it was.

I presume that on something like this that I would have done that with the Senator.

Q You would have probably given him the materials to review?

A Correct.

Q Do you recall if he had any comments about the proposal, the proposed request for an opinion?

A I don't recall that he had comments specific to this proposed request for an opinion. Again, I do recall that his comments were similar to what I have discussed with you, on my behalf, that we both wanted to make certain that the FEC was the right body, that it did describe the arrangement fairly and appropriately, and that whatever was finally implemented, if anything, would be absolutely legal.

Q And you said, I think, that you do recall that you related to the Senator your conversation with Mr. Mahoney to the effect that the proposal which you and the Senator contemplated -- that is, the making of an arrangement for a speech and then the referral for the arrangement on the compensation -- that that would be covered by the opinion which the attorneys were seeking from the FEC?

A That is my recollection, yes.

Q You can recall relating that information to the

A I don't know that he had any response at that point. He was simply absorbing as much information as he could about the whole operation -- that is, the operation of the Senator's organization -- and was more intent on taking notes and getting as much information as he could.

Q Okay. During the process of developing the agreement or the arrangement between the Senator and Piranha Press, did you ever talk to Gary Diamond?

A I'm sorry. During what time period?

Q During the time frame when the agreement is being formulated and the opinion is being sought from the FEC. Did you have occasion to talk to Gary Diamond?

A Yes.

Q And what did you all talk about?

A My discussions with Gary were limited to matters relating to the production of the book itself -- the timing of it, how the book would be published, what photos would go into the book, suggesting to Gary possible sources of photos that he had recommended, those kinds of issues.

Q Okay. So your conversations with him predated the working out of the details of the agreement that ultimately came to be between the Senator and Piranha Press?

A Yes. In terms of the publishing arrangement and the promotional arrangement, those were issues that were left to the attorneys.

reconfirming the situation with the FEC?

A No. I mean, we had been assured by the attorneys --

Q Okay.

A -- that the opinion fairly covered the activities that were involved.

Q The attorneys being?

A Mahoney -- Michael Mahoney and Donna Hanbery.

And that inquiries from the media should be addressed by way of saying that we are very conscious of making certain whatever arrangement was designed had been checked out in advance. It is that point that distinguished the arrangement Senator Durenberger had from other similar, or other book publishing, arrangements that since have been questioned.

That we did take the step of having it checked out by the FEC and in making certain that it was legal. And so this arrangement, in my mind -- and I had conversations with Doug and he certainly concurred with this and in seeing the Senator from time to time I may have mentioned it to him as well in 1986 when the media were looking at this -- that it was an entirely appropriate function for the Senator to be engaged in this. That it was an extension of the other activities that he had been engaged in since his election to disseminate his views on key public policy issues and we would certainly be happy to share with the media reams of

Q And what discussions have taken place?

A What he thinks the outcome of all this will be.

Q And what does he see the outcome being?

A That he is going to be judged for actions taken in 1984 by a 1989 political environment.

Q Did he elaborate on that at all?

A That he has a concern that because of the circumstances involving the Speaker of the House that the Senator's arrangement on his book may be seen in the same light and, in fact, they're two very different and distinct events.

Q What information did you relay to the Senator?

A What do you mean by information?

Q That was a concern he expressed to you. Did you --

A I shared that concern with him, that I believe, continue to believe, that Neither Madmen nor Messiahs was a legitimate function of the Senate staff. It was designed to promote the Senator's views. Whatever financial arrangements that were made came after the book was written. And, in fact, initially was not contemplated, that the books would generate any profits.

Whatever arrangements were made between the Senator and the publisher were made only after we took what I felt, and continue to believe, were the appropriate steps to have it checked out. And that this request for an opinion does fairly describe the activities. The attorneys from Mr. Mahoney's law firm assured us of that point and based on that we went forward and produced a book that does reflect the Senator's policy and viewpoints.

Q So all of what you've just said to me there is something that you relayed to the Senator in a conversation that took place when?

A Well, in fact, we had a conversation yesterday. I happened to be flying back from Washington and saw him on the airplane.

Q Okay. Well, did it entail this matter, discussion of this matter?

A Not the specifics of my testimony.

Q Okay. The conversation --

A I mean it concerned, again, the political ramifications of this whole event and what was likely to unfold for the Senator.

Q Okay. That was your discussion yesterday.

A Yes, correct.

Q Is that when he related the comments to you about being judged by 1989 standards for something he did in 1985 or 1986, or was that in the earlier conversation?

A No, that was yesterday's conversation.

Q That was yesterday's?

A Yes.

the three goals which I had already discussed with you in the first testimony or the first interview, that the Senator had discussed activities with the public relations firm. We may have discussed in the course of -- I also -- Excuse me.

I also had mentioned to him that I had raised some political concerns and those politicals, while they did not play a part of the 1988 campaign, certainly there is some basis now for those concerns. But confirmed with him that we had checked it out. It was not a discussion in any detail. It was not going through the steps. It was simply by way of pointing out the differences between the investigation into the speaker's book and this particular book that a significant difference was that this one had, an opinion had been sought on Senator Durenberger's book and the opinion had come back that it's an entirely legal thing to do.

Q I think I'm just about to the final question here.

You say that the draft request for an opinion from the FEC was signed and if it came to you, you probably would have passed it on to the Senator to let him look at it and get back to you with any comments. And I asked you if you recall him having any comments or asking any questions and you did not. Is that correct?

A I don't recall the Senator making any comments specific to this draft, to the FEC.

Q Okay. Do you recall whether or not you and the

Senator discussed at all what information should be put into the request for an opinion from the FEC?

A No.

Q Okay.

A No, I don't believe that we had that discussion, other than to say, let's turn it over to Michael Mahoney --

Q Okay.

A -- and have him research it and draft the opinion based on what he feels is most appropriate. There was a point at which Donna Hanbery asked me to participate in that research and to ask some questions of the FEC regarding honoraria and how honoraria, under different circumstances, could be treated, particularly what happened to honoraria that was earned in excess of the legal limits.

Beyond those conversations that I had with the FEC, it was left Mahoney's law firm to research the issue and to prepare the draft. Again, the discussions I had with the Senator, in which the Senator concurred, were to the point of making certain that in the opinion of the attorneys that the request for an opinion would describe the arrangement, that it was going to the appropriate body, those issues that we've discussed.

Q Okay. Did you have any discussion with Donna Hanbery about what information should or should not be in the request for an opinion from the FEC?

ADDENDUM TO DEPOSITION OF THOMAS HORNER

DATE OF DEPOSITION May 24, 1989

Page	Line	Incorrect Wording	Correct Wording
5	3	was	were

CERTIFICATE OF DEPONENT

I hereby certify that I have read and examined the foregoing transcript of my deposition and that with corrections made by me, if any, the transcript constitutes a true, accurate and complete record of the testimony given by me.

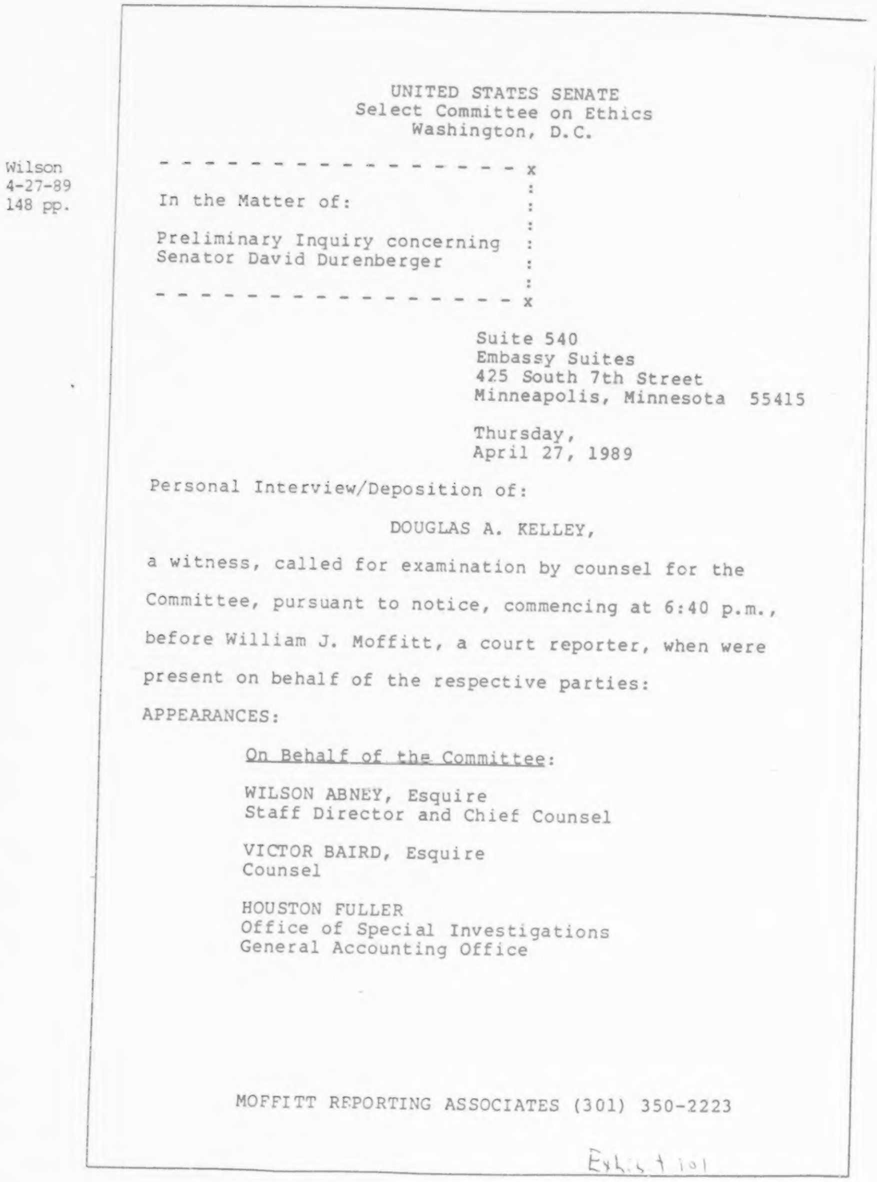
Thomas Horner
(Signature of Deponent)

Sworn to and subscribed before me this 1st day of June, 1989.

ADAM J. DIAMOND
Notary Public, Hennepin County, Mn.
My commission expires Mar. 20, 1992

Notary Public in and for

My Commission expires



UNITED STATES SENATE
Select Committee on Ethics
Washington, D.C.

Wilson
4-27-89
148 pp.

In the Matter of:

Preliminary Inquiry concerning
Senator David Durenberger

Suite 540
Embassy Suites
425 South 7th Street
Minneapolis, Minnesota 55415

Thursday,
April 27, 1989

Personal Interview/Deposition of:

DOUGLAS A. KELLEY,

a witness, called for examination by counsel for the Committee, pursuant to notice, commencing at 6:40 p.m., before William J. Moffitt, a court reporter, when were present on behalf of the respective parties:

APPEARANCES:

On Behalf of the Committee:

WILSON ABNEY, Esquire
Staff Director and Chief Counsel

VICTOR BAIRD, Esquire
Counsel

HOUSTON FULLER
Office of Special Investigations
General Accounting Office

Exhibit 101

and testified as follows:

DIRECT EXAMINATION

BY MR. BAIRD:

Q Why don't you just tell us who you are where you are presently employed and what your occupation is?

A My name is Douglas A. Kelley, K-e-l-l-e-y. I'm presently employed as a partner in the law firm of Mahoney, Walling & Kelley.

Q And how long have you been so employed?

A Since April 1, 1989.

Q And prior to April 1, 1989?

A I was the Chief of Staff to U.S. Senator David Durenberger from approximately July 1985 until March 31, 1989.

Q Prior to July of 1985?

A I was in private practice of law by myself at that time for awhile as Douglas A. Kelley, Attorney at Law; and then for about six months prior to that I was a partner in a law firm called Mauzy -- M-a-u-z-y -- & Kelley. And then prior to that I was an Assistant United States Attorney here at the District of Minnesota for almost seven years.

Q When did you first come to know Dave Durenberger?

A Oh, I had met him back in about 1978, I think; but only having had him shake my hand as a constituent. I don't think I really got to know him until 1985.

Q Okay. Prior to becoming a Senate employee and while you were a consultant to his campaign committee, were you performing any duties for the Senate?

A I don't remember the exact date. I may have gone on as a part-time employee of the Senate sometime prior to when I got there in July. I don't recall the specifics of that exactly. I did travel to the Senate on a number of occasions, you know, to start getting involved in the personnel decisions and that kind of stuff, but I wouldn't say that I really resumed my full capacity until I got there in July.

Q Okay. Who were you replacing and were they still there at the time you arrived in July?

A No, there was not a Chief of Staff at the time that I got there. The one prior to me had been Tom Horner who had been a Press Secretary and then became Chief of Staff. Horner had left -- I don't know exactly when -- I'm thinking like February of 1985 or somewhere in that neighborhood. So there was a period of time when there wasn't anyone on board.

Q As you were transitioning into the staff there during the months prior to becoming a Senate employee and immediately after you became a Senate employee, did you talk to Tom Horner at all to discuss existing office policies or personnel?

A I talked to Horner initially before I took the job.

guess some of the basic rudimentary parts of what the relationship was as he saw it and how he intended to carry it out.

Q Can you recall specifically what he -- How did he describe the relationship to you?

A I don't recall any specific contract or any discussions about where he laid it out. It's all sort of nebulous to me. But I learned at the time that there was a contract with Piranha Press. I learned that he would derive income from it. I knew that there was an arrangement by which speeches were going to be processed and other kinds of things similar to that. It was just kind of general outlines. And I don't think at the very beginning I really grasped where it fit in with everything else.

I mean my -- When I first got to the office, the major thing, we were 20,000 letters behind in our CMS mail system. There were a number of positions to be filled and other kinds of things, and those were the things that I was primarily tuned to at the beginning. I think after -- I think the Senator had an expectation that he could just hand scheduling to me and I would just rip it off and it didn't work that way because it took me awhile to get into that.

Q Uh-huh.

A You know, I went off on the priorities that I saw, which were primarily the personnel and other kinds of made you aware of that -- did it raise any questions in your mind about how that fit into the honorarium limitations?

A No. Because as it was explained to me at the very beginning, it was not going to honorariums. There was an opinion from the FEC that it was declared to be stipends and so I just treated them as totally separate.

Q Who explained that to you?

A Again, I don't know. I think that probably -- that sort of detail probably came from Mahoney.

Q Michael Mahoney?

A Michael Mahoney. Probably that were to come from Mahoney, I would expect.

Q But you can't recall?

A I don't recall exactly. I recall having gotten a file, roughly, that had in it among -- I think I probably asked them, I said, I'd like to see these things that are underpinning this and I saw a copy of the letters to the FEC and the FEC's response back. And I saw -- I think I saw a copy of the contract back then. You know, some very -- when the file was a very thin file; but just enough so that I could have a feel for what statutes were involved and what was going on.

Q All right.

MR. BAIRD: Mr. Moffitt, I wonder if you could mark this collection of papers.

to the Federal Election Commission and the Federal Election Commission opinion, did you discuss those with Michael Mahoney?

A I think it would have primarily been we sought an FEC opinion; here's what the FEC said. And if you'd like to read it, here's a copy, go read it, kind of -- we didn't -- We didn't sit down and go through it with a fine tooth comb. But I think Mahoney was the one who explained it to me.

Q Did you have a firm understanding of the distinction between these -- to use your phrase -- "commercial appearances" which were Piranha Press appearances and those which were honorarium appearances?

A Yeah, I think so. I think, I mean, I had a distinct differentiation in my mind between the two in terms of accounting primarily. I was interested in making sure that we would not exceed the limits on honoraria and that those would be accounted and taken care of and all that kind of stuff. With regard to Piranha, you know, I was aware of it. It was different from them.

Q So your distinction was primarily in terms of accounting. Did you make any distinction in substance between the two?

A I'm not exactly sure what you mean by that. I put them in different categories. I mean, there were Piranha requests and there were the other requests. So I'm not sure be the case, of many of the requests that were evaluated by you in the scheduling meetings in deciding which ones the Senator would take and which ones would become honorarium and which ones would become Piranha Press?

A Yes, I'd say that's true.

Q Okay. So let's assume this becomes a Piranha Press appearance.

A Okay.

Q What happens to it then? You all meet, the Senator said, okay, I'll do it. What then becomes of that document or what action is taken on the Senator's decision?

A Well, Durenberger actually made a fair number of these by his own and with his own notations. And he might say, yes, I'd like to do this and I would like it to be shipped one way or another.

Q Yeah.

A Ship it to Piranha Press or just accept it, I'll do this right here as it is. But typically then, I think that Jodi would send it off to Mahoney. For awhile I guess it was Diamond and then it became Mahoney, I guess after awhile. And then they would discuss with -- I mean if Durenberger said, yeah, I accept it as an honorarium speech, it would go on that way and then immediately we'd make sure that he wasn't over the limit, et cetera, et cetera.

Then assuming that all the other conflicts checks went along fine and it went off to Mahoney, then we would probably see it back with a cover letter at the next scheduling meeting saying, yes, the publisher is interested in this and would the Senator perform the services. And then if yes -- see, we would never lose control of the scheduling of the body with Durenberger so that we'd always get it back so that Jodi would be the one to make the arrangements in terms of she would want to make sure that Durenberger was going to be available and it wouldn't be on a Friday afternoon, back in those days when we'd all think we were going to get out early and then we might not get out early and all that kind of stuff. So that's why they came back.

Q So --

A And then they would go on the schedule. Nothing was official until it was on the schedule. So that's why they came back.

Q Okay. So it would go -- a decision made at the meeting by the Senator that it's going to be a Piranha Press appearance, we'd go to the -- Was Ann Kelly there when you got there?

A Yes.

Q And her name is spelled without an "E", right?

A That's right.

Q No relation between the two of you?

A That's correct.

A Uh-huh.

Q And do you recall advising him with respect to whether or not that travel payment should be reported on his financial disclosure statements?

A No. I don't think the question was ever asked.

Q Do you know whether or not any of the travel reimbursements connected with the Piranha Press appearances were reported by the Senator in his financial disclosure reports for calendar years 1985 -- covering calendar years 1985 and calendar year 1986?

A Say that again.

Q Do you know if the Senator disclosed on his financial disclosure reports for covering calendar year 1985, which would have been due in 1986 -- May 15, 1986 -- and for the one for calendar year -- due May 15, 1987 -- do you know if on those reports the Senator disclosed travel which had been paid for by the sponsors of his Piranha Press appearances?

A I don't think they were.

Q And do you know why?

A Because I think they were considered to be part of the Piranha Press contract.

Q Uh-huh.

A I don't ever recall us having a discussion about asking -- somebody asking for an opinion on that. I don't think we ever did have a discussion about whether -- what way we were going to treat those or not, and as I recall, that they were not. Now when I think back on it, and I would expect that -- I think the process that we used at the time was that the information was all collated by Jodi of all the things that were done out of our office -- all the honoraria, all the reimbursements and all that kind of stuff.

Q Uh-huh.

A And all that was submitted. I believe a lawyer in Mahoney's office was the one who prepared the disclosure form or at least one of the drafts of the disclosure form which then came back for perusal by the Senator and finally went out. But I don't recall at any time that anyone said, should be do Piranha Press and I didn't raise the issue myself.

Q It was never a subject for discussion as far as you know?

A That's right.

Q Did you know whether Piranha Press was reimbursing the Senator for his travel or were you aware that the individual sponsors of the events, the Piranha Press appearances, were paying the Senator's travel?

A Well, I think it was done in a number of ways. But I think generally the requesting agency paid for the travel as I recall and paid it and that was dealt with Piranha Press.

So, I mean, I don't -- And I think generally when Durenberger was ready to travel on a Piranha Press thing, a ticket would show up and that's how he would go. I mean, there would be a ticket there. We didn't buy tickets out of the office, I don't think. I mean, we might on an emergency basis or something like that. So I think they were all considered to be part of the Piranha contract, Piranha thing, and that's why they weren't disclosed.

Q Uh-huh. If the Senator did an honorarium appearance and somebody reimbursed his travel expenses --

A It was disclosed.

Q Disclosed. How did you or would you distinguish those two situations?

A Well, because -- I mean one was honorarium and one was the Piranha Press things and I made sure that Jodi was scrupulous in keeping track of the details for the honorarium requirements.

Q As to the travel expense part of that, how would you distinguish travel in connection with an honorarium and travel in connection with a Piranha Press appearance, as far as the reimbursement of those expenses for reporting purposes?

A As I dealt with that generally, I thought that that was a matter between Piranha Press and the sponsor as opposed to the Senator. And I guess it was thought to be covered by the contract.

BY MR. ABNEY:

Q Did you ever seek any opinion from the Ethics Committee indicating whether or not those sorts of payments needed to be disclosed?

A I did not.

Q Do you know if anyone did?

A No, I do not.

Q Who in the Senator's office would have been responsible for preparing the financial disclosure report, for knowing what the law was and what needed to be disclosed?

A Well, I think generally on the financial disclosures that they were a matter that I wanted to make sure it was done, but we shipped it out because I didn't want to do them.

Q Uh-huh.

A I did not want to be the in-house lawyer and do everything else. So that, that's why they were shipped off to an outside operation.

Q And you believe that the financial disclosure reports and PAC were prepared at Mr. Mahoney's office?

A Well, I -- You know, it was kind of an ongoing process. We provided a whole bunch of information to him. There was a fair amount of discussion back and forth with lawyers there about what should go down and what shouldn't go down and so forth. But, you know, I guess we just never discussed this particular issue.

Q Did you understand that Mr. Mahoney was, in fact, to be responsible for understanding what the disclosure law was and what the Senator's obligations under the --

A Well, the Senator is ultimately responsible for his own. He expected me to help advise him. But, you know, but as a matter of other things, I think that was one of the reasons why he shipped it out -- to make sure that he got other opinion than fill it in himself was because they're complicated and hard to do, I think. It's like filling in your tax return.

(Laughter)

THE WITNESS: And I'm sure not qualified to do my own tax returns and certainly wouldn't hold myself out to anyone else's or these financial disclosures.

MR. FULLER: We like to think of it as the "E-Z Disclosure Form."

(Laughter)

BY MR. BAIRD: (Resuming)

Q Doug, looking at Exhibit 4, again, page 16 and 17. Have you -- Are you familiar with this letter that appears on those two pages, that form letter? Is that something you've seen?

A (Witness examines document.)

(Pause)

weren't in the building or here with constituents. So it's possible I might have but I don't recall any.

Q So you have no personal knowledge of -- at the Piranha Press appearances whether the Senator promoted his book or books?

A I know that when he was -- that he had asked so that when he would leave on a trip, if it was to be a Piranha Press speech that the staff -- and that generally meant Jodi and the people that worked with her -- give him a copy of his book so he could display it and tell him what was going to go on at the event. And I remember a couple of times when there was no book given and he chewed a little butt about that because he didn't -- he showed up and didn't have a book to give -- or to hold up and to discuss and apparently nobody there gave him one. And so he had some heartburn about that.

So I know that that did occur a couple of times and it was -- we tried to put on a checkout list, and when he would leave the office, then whether or not if it was a Piranha appearance, did he have a copy of the book with him in his briefcase.

Q Even to those where he may have left the office with a book, you don't know if at those appearances he actually discussed his book or promoted his book before those audiences?

A I think he generally tried to do that. I was aware wonder if you'd take a look at that for us, Doug.

A (The witness examines document.)

(Pause)

THE WITNESS: All right.

BY MR. BAIRD: (Resuming)

Q What can you tell us about Mona --

A Meyer.

Q -- Meyer, McGrath, Inc. and that proposed purchase? Did you ever discuss that with the Senator?

A Yes, I did.

Q Could you relate to us what that discussion was?

A The discussion was whether or not, after the contract with Piranha Press ran out, whether it would be renewed and I objected vigorously to a renewal of the contract. In the interim I had told Durenberger that I had changed my political assessment of the problem and that I thought this was going to cause much bigger political problems than I had anticipated at the beginning, and that I thought the agreement ought to die. It ought to die a natural death on its own and that it should not be renewed, and said that I was very opposed to a new arrangement with Mona, Meyer and McGrath.

Q What was the basis of your objection, again, to the continuation of the agreement?

A Well, that in May of 1986 we had caught flack when the disclosures hit the paper and everybody discussed it. I knew that as we got closer to the election that it would be more sensitive and also when I originally gave my opinion as to the political liability, it was made without as much knowledge of other problems which would arise and other political problems.

So that, if everything was perfect in the Senator's life, and there was Piranha Press, I thought it could be easily sustainable. But if there were other problems that were occurring, then this became part of a burdensome load, rather than an isolated case, and that's why I changed my political judgment about it, because of other problems that were there.

So when I -- When this came up, I was vigorously opposed to any renewal of the agreement and so stated.

Q Was anyone advising the Senator to continue the arrangement with Piranha Press?

A Oh, I think he wanted to do it for financial reasons. So -- I mean he wanted to continue an arrangement in some way. Now he had -- I mean, I was throughout this period trying to cut back on speaking arrangements, generally, and he wanted to expand them. He wanted to go into other areas. So there was a source of tension between us on that. When it came to this I thought it was very important that I really had to inform him in no uncertain

Administrative Assistant, as a former Assistant U.S. Attorney -- did you go back and take a look at the contract and back and take a look at the FEC opinion and in light of what you read in the papers say, "Gentlemen, we may have a problem here based on the way we have been conducting this."?

A I made an argument that there was a problem but it was a different one than you're addressing. My thing was this is a political problem. I believed from the outset that the FEC opinion and the fact that I had gone and talked to Bill Canfield meant that Durenberger was doing -- had been sanctioned to do what he was doing.

Okay? I did not do -- I didn't go any further behind. I assumed that the FEC knew what it was doing and that its opinion was valid and Bill Canfield said to me, "That takes care of it." All the Ethics Committee looks at is the honoraria and the honoraria limitations. If the FEC says it's a stipend, by God it's a stipend.

So when I looked at it, I said the newspaper articles are saying you're getting extra money and you're giving all these speeches and you used to make a lot of money before the honoraria limitations were up. The newspapers are saying which groups are you giving speeches to and other kinds of things and your whole topic of speeches is a subject of heartburn and that's something that you ought to take a look at.

I did not go back and say, gee whiz, let's reread the FEC and talk to the FEC again. I never did that. I took the FEC opinion at face value and when I was making the determination. I did not go in and second guess all the lawyers. You have to keep that in mind. I was not trying to act as the lawyer, as an Assistant United States Attorney, as a prosecutor or anything else. I was now a consumer of legal opinions. I had a legal opinion from me from the FEC that said, this is a stipend. And I also -- I went -- I figured it was incumbent upon me also to go and talk to somebody else because I asked, I said, did you go to the Ethics Committee. They said, "No, you don't need to."

Well, they said Durenberger talked to Clinden and he and Clinden Lee said you don't have to. I wanted a little bit more than that so I went and talked to Bill.

Q Uh-huh.

A And when I got that I didn't worry about the ethical part of it. All I worried about then was the political fallout and that part I argued vigorously.

Q As a consumer of legal opinion, did you believe -- having looked at the opinion -- that the FEC contemplated that essentially every appearance that the Senator made would be pursuant to a request to his office for his appearance for an honorarium?

A No.

Can you say that again?

Q I don't think I can.

(Laughter)

BY MR. ABNEY:

Q As a consumer of legal opinions, when you looked at the FEC opinion on the issue, did you believe that the FEC opinion, as it was written contemplated the fact that almost everyone of the appearances that was made under the Piranha Press contract was, in fact, generated through requests to the Senator's offices for honorarium appearances?

A You're asking me whether I went behind the FEC opinion?

Q I'm asking --

A Essentially that's what you're doing. You're saying, did I got to see what the FEC had decided as the method of how this was all going to operate.

Q Uh-huh.

A I did not do that. I took the FEC opinion at its face value, which said that this was going to be a stipendiary relationship and that's how I acted. So I didn't go behind it; I didn't go ask for any new opinions or do anything above -- go to Bill Canfield and ask him his opinion on what was going on.

Q A couple of other questions, if I could. You mentioned, I believe that you went to speeches with the

Canfield in your conversation with him on February 25, 1986; do you recall?

A I think I tried to put most of the details down here.

Q So if you had told Bill that the groups before whom the Senator was appearing were paying the Senator's publisher for the appearance you would have made a note of that there, correct?

A Say it again.

Q If you had told Bill that day that requests for honorarium appearances that came to the Senator's office were being handled through the contract with the publisher, if you had told him that, you would have made a note of it there; is that what you're saying?

A Well, I didn't -- I don't think the discussion was of those kinds of details.

Q Okay. That's what I'm getting at. The kinds of details that you're talking about were, the Senator says that he got an opinion from the FEC and we do have an opinion from the FEC. Do we need to also get an opinion from you? That's the kind of detail you were talking about?

A Well, it was a little more than that. But I didn't go into the arrangements of how requests were handled with him or any of that.

Q Okay. Or whether the audiences were paying the publisher for appearances?

A I don't think that was discussed.

Now this memorandum has most of the important parts that I consider the conversation in it. It doesn't have every word that we spoke or every concept that we did. So it's not totally exclusive but it contains the gist of what my conversation was with Bill.

Q Okay. And I just wanted to clarify that you do not know what details the Senator gave Clinden Lee --

A I do not.

Q -- in that conversation? So you could not have related the details that the Senator did give to Clinden Lee?

A No. But, you know, bill seemed to be -- I mean there was -- He understood and recalled that that had been done, seemed familiar with the contact having taken place. So it wasn't like -- kind of like I had to say, there was this conversation and following 15 things were said, because Bill said, yeah, I remember that.

Q He remembered --

A He had an idea that Durenberger had talked to Clinden Lee about that topic.

Q Okay. But he didn't tell you that he knew the details that the Senator had discussed with Clinden?

A He seemed to be familiar with the conversation.

Q You all didn't --

A So that, you know, he didn't say, I'm familiar with all the details of the conversation, but he didn't say he wasn't either. I mean, it was kind of like, yes, there was that conversation, I'm familiar with it so let's get going. What else is there.

I mean so we didn't stop to say, well, here's what we're going to do.

Q Okay. Do you know how much money the Senator received from Piranha Press for making the appearances over the two-year period?

A Yeah, he received what's in the disclosures.

Q Which is what?

A Roughly, $100,000. As I recall there was a couple odd dollars over that somehow.

Q Okay. Do you know if there was anything of value in connection with the Piranha Press appearances that was transferred from either -- I'm going to list some organizations here -- Gary Diamond, Northwest Beverages Journal, Inc., Piranha Press, Inc. -- or from those organizations or entities, anything of value transferred to either the Senator, the Senator's spouse, any of his dependent children, or any entities owned or controlled by he, his spouse or his children? Is that getting a little out of hand?

A I'm going to ask you to repeat all that.

UNITED STATES SENATE
Select Committee on Ethics
Washington, D.C.

- - - - - - - - - - - - - - - - -x
In the Matter of: :
Preliminary Inquiry concerning :
Senator David Durenberger :
- - - - - - - - - - - - - - - - -x

Wednesday,
May 24, 1989

Personal Interview/Deposition of:

DOUGLAS A. KELLEY,

a witness, called for examination by counsel for the Committee, pursuant to notice, commencing at 3:43 p.m., at Multifoods Tower City Center, Suite 4150, Minneapolis, Minnescta 55416, before William J. Moffitt, a court reporter, when were present on behalf of the respective parties:

APPEARANCES:

On Behalf of the Committee:

VICTOR BAIRD, Esquire
Counsel

Exhibit 10c

made, et cetera, et cetera. And the question was brought up again as to what about the political feasibility of this. And I suppose not addressed, because by that time the decision had already been made, but how to handle the disclosures and how to handle the -- at the time the disclosures were made the obvious questions that would come from the press.

Q Okay. Did any of the questions raised in those articles at the time prompt a discussion of whether or not perhaps the Senator should go back to the FEC to see clarifying opinion or a confirmation of its earlier opinion?

A No. At the time, I believe the answers that we gave were that that they were legal and ethical. And if there was a question, the question would have been about whether or not they were politically feasible.

I don't think at any time that I was there anyone ever questioned the FEC opinion.

Q Anyone in terms of people on the Senator's staff or people advising the Senator?

A Yes. In terms of the legality of the opinion, once the opinion was there, we all just relied on it. I didn't go back and ask any more questions about it and nobody ever said, "Why don't you?"

Q Okay.

A We did not.

Q Did you ever just come right out and ask Michael Mahoney, as the Senator's attorney, if the arrangements that were being made under the agreement with the publisher, and the speeches that were being give, and the Senator's income from that was covered by the FEC opinion?

A Well, at the beginning --

Q Yes.

A -- and when he explained it to me, we had that discussion to a certain degree. I mean, I -- It was just told, yes, here's the opinion and this will cover it. So I mean in terms of, did I later go back and ask about that or revisit it, no, I did not.

Q Okay. So as a consumer of legal advice, you received that advice from Michael Mahoney in your initial discussions about the Senator's agreement with Piranha Press. Is that correct?

A Well, I just asked him how it worked and so forth. I think he and I would have discussed it in that vein, I guess.

Q All right. Have you discussed the subject matter of the Complaint with the Senator since the Complaint's been filed?

A Yes.

Q What's the substance of those discussions?

A (No response.)

VEACH
5-5-89
241 pg
30.5 hrs

UNITED STATES SENATE
Select Committee on Ethics
Washington, D.C.

- - - - - - - - - - - - - - - - - x

In the Matter of:

Preliminary Inquiry Concerning
Senator David Durenberger

- - - - - - - - - - - - - - - - - x

Suite 540
Embassy Suites
425 South 7th Street
Minneapolis, Minnesota 55415

Thursday,
April 27, 1989

Personal Interview/Deposition of:

MICHAEL C. MAHONEY,

a witness, called for examination by counsel for the Committee, pursuant to notice, commencing at 1:10 p.m., before William J. Moffitt, a court reporter, when were present on behalf of the respective parties:

APPEARANCES:

On Behalf of the Committee:

WILSON ABNEY, Esquire
Staff Director and Chief Counsel

VICTOR BAIRD, Esquire
Counsel

DIRECT EXAMINATION

BY MR. BAIRD:

Q Well, let's start from the top, and just give us your name and address and occupation for the record.

A My name is Michael C. Mahoney. My residence address is 4501 Moorland, M-o-o-r-l-a-n-d, Edina, Minnesota. My occupation is as a lawyer.

Q As a lawyer, is David Durenberger one of your clients, --

A Yes.

Q -- Senator David Durenberger?

And has he instructed you as to the attorney-client privilege in this case?

A Yes, he has.

Q What has he told you?

A He's advised me to cooperate fully with any investigation. And upon my advice to him that he has an attorney-client privilege, which rests with him, he has waived that privilege.

Q Okay. Michael, if you could just give us the background of your relationship with the Senator? How did you come to know him and how did you come to be his attorney?

A I came to meet the Senator in 1978, when he was first running for the United States Senate, became involved in his Finance Committee, and got to be closer to him as a result of that relationship, and came to be his lawyer, I would estimate, about 1981 -- or one of his lawyers, a lawyer of his.

My relationship with him as a lawyer is particularly relative to finance and other matters that are personal to him.

Q And has the attorney-client privilege developed over the years, since '81, into a personal relationship?

A I would say it was the other way around. It was a personal relationship, and then it became an attorney-client relationship. But it is both.

Q Yes.

A It is personal and it is professional.

Q And give us an idea of the kinds of legal matters in which you represented the Senator generally.

A We've been counsel to him in connection with advising him, counseling with him on financial matters; that is, his personal financial matters, the considered sale of his home in McLean, purchase of another property, I believe is also in McLean, tax matters, personal tax matters, the Piranha book contract, and the ethics opinion. Those stick out in my mind right now.

Q Does your firm have a Washington office?

A Yes, we have a Washington office.

a

was writing a book, "Neither Madmen," or did you?

A No, I did not.

Q So the first you heard of a book, it was already a tangible item that you could put your hands around? Is that --

A That's my understanding, but I don't have -- I didn't see the book. I don't have knowledge that it existed. There were discussions about the book, and I'm presuming that the book existed.

Q Okay. Well, how did you -- what discussions do you first recall concerning the book and with whom were those discussions?

A My general recollection of the first discussions occurred -- and, again, I might get the years wrong, but it occurred in approximately July or August of 1985, I believe. And that discussion was --

Q How about '84? Would that --

A '84? Okay. It could be '84.

And that discussion was with Tom Horner, who was then the Chief of Staff to Senator Durenberger in Washington.

And our discussions were about trying to take three specific concerns that the Senator had and the staff had for him, the Volunteer Committee, specifically, had for him. And that was to develop a national image; that is, a broader base of constituents.

And to -- the Senator, particularly, had an interest in disseminating his ideas and views on various subjects of concern to him.

And, finally, since he had written one book, which seemed to have drawn some attention, he had considered writing other books, and that that may be a means of advancing those two and, at the same time, hitting the third interest, which was to, if possible, make some money because his financial needs were such that he could use the income.

So the discussion was: Did we, as lawyers, see any opportunity for advancement of those three ideas and, specifically, if those ideas were to be advanced, how they could be done in a manner which did not violate the honorarium limitations. That was the first discussion.

Q Okay. And that was with?

A I believe it was with Tom Horner.

Q Tom Horner.

A That's my recollection.

Q And how soon thereafter would you have discussed the matter with the Senator? Do you know?

A No. I have a general recollection that -- but not a specific one, a general recollection that the Senator and I have talked about it. I can't recall if it was after having done the research or before doing the research. It was a general sense that the Senator and I had talked about it. And I specifically recall telling him that we had completed the research.

But your question was: Did I talk to him before we completed the research? And I don't recall that.

BY MR. ABNEY:

Q Research into what?

A The legal issues relative to honorarium limitations with respect to sales of books, speeches, presentations.

We had three specific items. One, was it possible to use the existing book and the possibility of future books to advance the Senator's national constituency? Could he have a broader base of support? Should he do another book? And should he do some speeches and presentations?

Second, could he advance his ideas and concepts by means of a book? Since "Madmen Nor Messiah" advanced some ideas, would other books advance more ideas?

And, finally, could those two be put together in such a way that the Senator could receive some income and not violate any honorarium limitations?

Now, I don't recall whether the specific focus was honorarium limitations, but it was: What are the basic general rules as to which we must be concerned when trying to put those three things together?

And your question was: When after that did I talk to the Senator? And my answer was and remains: Certainly after we finished our research. And our research was into the several laws respecting income from sales of books and appearances. And we may have talked to him. I may have talked to him before then. I don't have a specific recollection of it, though.

BY MR. BAIRD: (Resuming)

Q You did have discussions, I take it, prior to submitting your request for an opinion on his behalf to the Federal Election Commission?

A Yes. I think the sequence -- that's what you're leading up to. I think the sequence was that we, the office, Donna Hanbery, did the research, and maybe another lawyer in my office, but I know Donna did the research, into what the limitations were.

And her preliminary conclusion was, and my concurring conclusion was, that the royalties from the sale of books or revenues generally from the sale of books and fixed incomes from appearances were not within the narrow limitation of honorarium. "Honorarium" is a defined term.

And subsequent to that, we had a conversation, at least with Tom, and I believe with the Senator, about our preliminary conclusions, in which we talked through those conclusions, which led to the Senator saying specifically, as I recall, following our advice, which we had written to him, that is, "Senator, this is our opinion, but we think it would be on safer ground, since the area is very fuzzy, that you ask for an advisory opinion because we're advised that we can ask for and secure help and assistance from the Federal Election Commission as to exactly what constitutes an honorarium and its limitations."

And his response was, "That seems prudent and reasonable"--I don't remember if those were the words, but that was the message--"So go forth and request and provide them with whatever they need, which then led up to the opinion.

Q When you got back to the Senator and you told him you thought it was wise to get the opinion of the Federal Election Commission, I recall from our earlier conversation you said at some point the Senator told you about a discussion he had had with --

A Ethics?

Q -- a member of the Senate Ethics Committee. Was it in this time frame that he talked to you about that or could you tell me what that occurred?

A My recollection was that -- or is that we first secured the advisory opinion. And then following that, we had a specific discussion about getting some concurrence from the Ethics Committee. So I believe the sequence was: first, the written opinion from the Federal Election Commission, if I have the names right; and, secondly, the Committee.

And then I recall a conversation with the Senator in which he said he had spoken with a Clinden Lee or Lee Clinden of the Ethics Committee, who had, as I understood it, advised the Senator that -- of two things: one, that the opinion from the Ethics Committee -- no -- from the Federal Election Commission was dispositive of the issue, that they did not have a differing view; and that, in his view, he concurred with what we had received.

Then there was a subsequent conversation with -- between Kelley, I believe, and someone.

Q So your understanding was that the Senator had spoken to the Ethics Committee personnel, Clinden Lee, after you had obtained the Federal Election Commission advisory opinion?

A Yes, that's my recollection.

Q Okay. Donna Hanbery, what is her relationship to your firm?

A She's a partner in the firm. She's an officer, director, and shareholder in the firm.

Q Okay. What was her relationship in 1984?

Q After your conversation with, you believe, Tom Horner on the subject of the three goals that the Senator had and the things that he wanted, what did you -- how did you interpret that as an attorney and the Senator being your client? How did you interpret that as what he wanted you to do, was your interpret?

A First determine --

Q What did you think your job was?

A Determine what the rules and limitations were. And once -- and so we determined what the rules and the interpretations were.

Q Governing?

A Governing the limitation on income, narrowly focused as what we understood to be honorarium, and having determined that that was a narrow form of prohibited income--these are my terms, not somebody else's--that there were some forms of income that were not prohibited, and to advise him as to the forms of income that were not prohibited since they did not constitute honorarium; that is, as I looked at it, the world was "This is okay. This very narrow portion is not okay. If you're in the okay portion, you're okay. It's not unlike tax planning. If you do this, an otherwise questionable deduction may not be deductible because you don't have the evidence for it." That's a form of analogy.

But here there is a narrowly prescribed form of conduct, and that narrowly prescribed form of conduct--this is from memory now--was that income from articles and speeches was honorarium. And for these purposes, honorarium was limited to a certain amount. Therefore, non-honorarium was not limited.

So we determined what the rules were. And we said, "It appears to us that should the Senator have a publisher who would publish this book and any other books, it would fit into the broad category of not prohibited income."

And then having said that, our job was to say, "All right. To meet these three goals, we could enter into a contract with the then publisher Piranha Press or others." And we had focused on other large publishers to accomplish this same end.

And we had -- so I believed our assignment was to advise as to what the possible choices were and then to allow them to pick up the possible choices and see how the pieces would fit together and choose a course of conduct.

Q Yes. At the time of the Senator's request, had you had experience in matters before the Federal Election Commission?

A No, none.

Q No Federal Election --

Q Yes.

A I don't know if I went through these drafts. But certainly before it was submitted, I did, indeed, look at it and review it.

Q Did you review the contract at this point, the preliminary draft of the contract?

A I don't recall doing it. This may have been given entirely to Donna to negotiate with Diamond.

Q At this point --

A But I could have reviewed it.

Q Okay.

A I don't recall.

Q At this point, prior to your having submitted a request to the Federal Election Commission, what was your understanding of what the basic agreement was to be between the Senator and his publisher, Piranha Press?

A I get confused between what I now understand and what I then understood. So it's very hard for me to separate today from five years ago --

Q Yes.

A -- four years ago, whatever it was.

My general understanding of what we had agreed to at the time we submitted it was that the publisher, the Piranha Press, a division of Northwest Publication, would be the exclusive publisher of the Senator's works, and that the publisher would be responsible for promoting the works of the books, but that the Senator would be responsible for promoting the books and the publisher, the concept being that the publisher would be able to move up in the market, and for which the Senator would be paid a royalty from the sale of books and a fixed fee relative to the contract which was being negotiated; that is, was a sum of money that would be paid, and that there would be a number of appearances made, and that Diamond would get all the benefit. He suffered all the risk, the Senator's -- except for the cost of paying the Senator.

So the business deal, as I understood it, was Diamond would take the risk that he'd be able to sell enough books and/or use the Senator's appearances to make a sufficient sum of money to pay the Senator $100,000, 50 and 50, and make money from this vehicle, as well as hopefully move into a broader base of book promotion.

That's what I believe the deal was as we were putting it together, but, again, I get confused between how it came out and how it was proposed.

Q Was the idea of having promotional appearances by the Senator for which -- was that an idea that came to you from the Senator's office or is that an idea that your office generated in response to looking into the questions presented to you by the Senator, questions --

letter, which I've seen before, which we sent to the Federal Election Commission.

Q Cover letter. What was sent to the Federal Election Commission with that letter?

A Maybe this is it. I think this is it.

That helped. Your question just helps.

Q Okay.

A I think this is what we submitted requesting an opinion as to what constituted honoraria. Yes, that's what this is.

And this, I believe, reflects the work that we did relative to the research that we pointed to earlier as to our conclusion that there were two forms of exceptions: stipend and income from books.

Q And who arrived at the decision to seek the FEC opinion? Was that your decision or Donna Hanbery's or the Senator's?

A Well, we reached the -- as lawyers, we reached the conclusion that we -- since it was available, we should ask for it. And we counseled with our client and got their go-ahead.

Q Okay.

A So if that's reaching a decision, it was all of us reached the decision.

Q Okay. And did you draft this letter to the FEC that any conscious decision not to send the agreement was ever reached.

Q All right. Was it your intention in that letter to describe as fully as possible the agreement or the arrangement that you were asking the Commission's opinion on?

A I think we were describing a general sense of what the agreement was and that someplace in here, I think we said, "If you want to know more, please tell us."

Q All right. Now, earlier your office had generated this.

A Yeah, here it is. "Please advise us of your opinion on this matter or if further information is needed."

We had no sense of how this would work. We had a general sense. And so we gave what we thought was the basis from which a decision could be reached, but fully expecting that if this was not sufficient, that someone would call or write or ask.

Q You had a general sense. Tell us what your general sense of the agreement was at the time you submitted this letter to the FEC. And you may want to refer to your preliminary draft agreement.

A Well, again, my sense of what it was is colored by what it's been.

My sense of the agreement was Piranha, Gary Diamond, would promote the books -- the book or books and that his means of doing it would be the traditional ways of doing it; that is, through bookstores, because I believe the books were then in B. Dalton--at least I've been told that--and that direct mail would be used, other vehicles would be used, to generally promote the books the way you would routinely think of book promotion and that he would also use appearances by the Senator to promote Diamond, the publisher, the book or books, and that Diamond would do what was necessary by those two vehicles to generate the revenue sufficient to pay the stipend, the annual fee due.

So he had to generate at least $100,000 over a 24-month period.

Q Okay. And how were those revenues to be generated?

A Basically any way that Diamond could do it from those two things which the Senator would have to provide: the book or books; and the Senator's appearances.

Q Which did you anticipate to be the primary source of revenue generation?

A I don't think we knew. I don't think we had any sense as to which would be greater or that they would be equal. I don't have a recollection of any view that one would be greater than the other.

since it is a business enterprise, that somehow there would be money flowing to the person who is going to get the celebrity there.

Q Yes.

A And whether it's a typical college speaking tour or other speaking tour, that those are promotional appearances for which it would be common knowledge that money would be paid by some, if not all, of the groups before whom the celebrity appeared.

And out of that money, the question that we dealt with was whether or not that was honorarium.

Q Yes.

A And the conclusion we came -- I didn't mean to get into it again, but the conclusion we came to was: It was the nature of the money coming out; that is, if it was fixed over a period of time such that if our research indicated that it was appropriate and acceptable for Senator Dole to make a limited number of television appearances or radio appearances,--I don't remember what they were--that those appearances weren't free and that, therefore, the word "appearances" clearly appeared in the literature that the Commission had to use in arriving at the decision.

So our presumption was that the advisory opinions that we cited, the basic reference material underlying all of this made it clear and understandable for us to presume that money would be flowing from the groups to the publisher and from which the publisher would pay the Senator. Some may be free, but the vast majority of them would be money-making.

Still, as you ask the question, it's inconceivable to me.

Q Inconceivable to you that the Federal Election Commission could read that letter and not know that the audiences would be paying the publisher for the Senator's appearance? Is that what's --

A Correct.

Q -- inconceivable to you?

A Correct.

And let me just look at the words and see why it would come out to that. To me, an appearance, a promotional appearance, suggests money.

Q So the use of the word --

A And these are that the publisher and the author set, and they agree on, these appearances.

Q Yes.

A And if in the conceivable world of alternatives, it would not occur, that some people will be paying money.

And so it was always our presumption that -- mine at least --

Q Do you --

A -- as compensation for the personal appearances.

And, I guess, finally, it's the end, where we said, "If there's something that's unclear" -- now, all these words don't appear here.

Q Yes.

A But it's the end. "Please advise us of your opinion on this matter or if further information is needed." We never had any intention to say, "This is all there is. This is all we thought of." We said, "We've looked at this."

Q Now, it wasn't, I take it, that you felt that -- I mean, let's go back to the preliminary draft again. Now, this contract was created, I assume, to reflect the things that your client had informed you that he wanted in the contract. Is that correct?

A I wouldn't say that's fair here. I think that we were drafting the contract, negotiating the best we could with Sam and then informing him that we fit what we thought was the -- were the goals. I don't think he said, "This is what we have to have."

Q Well, while this process was going on, did you talk to the Senator about the development of the agreement and how it was --

A I don't think so.

Q -- developing?

A I don't think so.

Q Did you talk to him about whether or not he was willing to make appearances to promote the book?

A Sometime in the process we did.

Q The process before you asked for the Federal Election Commission opinion?

A I believe so.

Q Okay. Did you see it -- from what you're telling me, you did see it as an important distinction that the audiences would be paying the publisher for the Senator's appearance?

A An important distinction? No.

Q As opposed to -- so your request to the FEC would have been no different if the audiences had not been paying for the Senator to appear?

A That's correct. My conclusion was that whether the audiences paid or did not pay, that was on the publisher's revenue side. That was irrelevant to the equation.

What was relevant to the equation was what the Senator got. And as long as the Senator only got a royalty from the sale of books and a fixed stipend, which had -- was not relevant to how much money was paid on behalf of the numbers of groups before whom he appeared, that, by definition, could not, as a matter of law, be honorarium because it is unrelated to the amount of money that flows in to the publisher.

So if there were 5,000 appearances made, then the Senator's money was $50,000 per year. And that's based, as I sit here, on my recollection of the advisory opinions that I remember seeing and our research, which indicated that it isn't a question of who pays the money; it's a question of what the elected official got. And if the elected official got a fixed sum of money over a fixed period of time, that was not, by definition, honorarium.

Q Right. You were here -- that was the legal opinion you developed from the research that was performed by your associate Donna Hanbery?

A Correct.

Q Okay. And you were asking the Federal Election Commission to tell you if you were correct in that opinion; is that right?

A Correct.

Q And did you not consider it important, in asking the Federal Election Commission to tell you that, to give them all of the information that you had about the proposed arrangement?

A Not all of the information that we had, but all of the information that we considered material. And since in the -- I believe in the information we looked at, --

Q Yes.

A -- we didn't see that the source of the payment to the publisher or the radio station or the television station ever entered into the question.

It wasn't -- it was never suggested in anything I ever saw that -- whether this was a pay television station or a promotional or commercial or whether the income was derived from advertising or any other source, the question was: How was the money paid?

So when you ask the question: Did we give them every fact?; as I looked at it, it was only the material facts that were necessary to make a decision. And there are other facts in here that I believe we presumed and that I think people are operating on under this.

Q So you deemed it not to be a material fact that the audiences would be paying the publisher for his appearance; is that correct?

A No, no.

You asked me whether or not -- I don't remember what the question was, but I heard the question differently.

I thought in this letter that we told them impliedly that there would be revenues from appearances because it doesn't seem to me consistent that the appearances would be without money.

But you asked me whether or not the conclusion, the legal conclusion, would be the same whether or not money was paid for the appearances, and I said, "Yes." My conclusion was it didn't make any difference as to whether or not the audiences paid or didn't pay.

Q All right. So I'm asking you if you reached the conclusion that it was not a material fact as to whether or not the audiences paid the publisher for the Senator's appearances?

A Then?

Q Yes.

A I don't know.

Today, as I sit here thinking about it, no, I don't think it is.

Q You don't know then whether or not you knew whether or not it was a material fact?

A That's right, because I don't -- you know how these opinions -- you know, as lawyers, how they get developed.

Q Yes.

A You look at a significant amount of information, and you reach conclusions. And then four years later, you say: Well, did you use this information in reaching your conclusion? As I sit here today, I don't think I did.

Q Yes.

A But I may have, and Donna may have, in arriving at it. But today I don't.

Q So did you, at the time you submitted the Federal Election Commission request, deem it a material fact as to whether or not the audiences would be paying the promoter, the book publisher, for the Senator's appearance?

A No, I don't think so.

Q "Yes" or "no"?

A My answer would be no.

I think -- I think I knew it. I presumed then and presume today, as I look at the letter, that it was adequately disclosed, suggested, implied that money would flow from the appearances and that they're in the nature of promotional.

But you asked me a hypothetical question.

Q Yes.

A If I didn't consider that, would I now, as a matter of law, consider that it's not material whether or not they paid? My answer: I would not consider it material.

Q Okay. Is it your understanding that publishers generally will charge substantial amounts of money for book promotion appearances?

A Some. Some will.

MR. ABNEY: I'm sorry. Go ahead.

MR. BAIRD: Yes.

BY MR. BAIRD: (Resuming)

Q Just a quick point before we move on, I did not see anywhere in the research any of the regulations of the Federal Election Commission. Did you do -- on the idea of giving them facts or not giving them a specific fact did you do any research to determine who bore the -- what the scope of the advisory opinion would be, what the scope of the protection of the advisory opinion would be?

A I didn't. Did Donna? I don't know.

Q Okay. But you don't know whether or not the failure to include a fact that the Commission might deem relevant would be a risk borne by the Commission or by the Senator?

A No. But, again, my answer to that question is if, in the process, someone said, "There are material facts that would be necessary," we opted for that by saying "If there's anything that anyone considers might be important,"--now there's a lot of words, but they were put into three--if, in their opinion, there's any information on this matter that is needed, we'd gladly provide it --

Q Yes.

A -- and fully expected that if anybody, in the process of thinking about it, said, "Well, we'd like a little clarification on what a promotional appearance is," or any other language that we used which, on its face, didn't mean what we thought it meant, someone would ask.

BY MR. ABNEY:

Q But you thought that they were considering a traditional and customary sort of thing here?

A We thought that -- my answer to that question would be: My thought would be that they would have the same view of customary as we did, and that the word "promotion" meant the same to them and "appearance" meant the same to them and that the English words had the same connotation to them as to us.

BY MR. BAIRD: (Resuming)

Q Let's look at your request to the FEC again. I wonder if I could get you to read this sentence that starts on Page 54 of Exhibit 2, "Under the author-publisher agreement"?

A "Under the author-publisher agreement, Senator Durenberger, as author, has conveyed certain rights in the work to the publisher, has agreed to make over a two-year period a specific number of promotional appearances for purposes of promoting the book and the publisher, at such times and places as may be agreed upon between the author and the publisher."

Q Okay. What was the specified number of

Q And now your answer was "No."

MR. ABNEY: And what time frame are you referring to?

BY MR. BAIRD: (Resuming)

Q This is at the time the Federal Election Commission request was submitted; right? Nobody had -- that had never occurred to you and no one had ever mentioned that to you?

A That's correct.

Q Okay. And I suppose the -- so you sent the request in to the FEC. You got an answer back in December. Any activity in the meantime? Any developments with Mr. Diamond or with filling in some of the blanks in the contract? Is that when some of that occurred?

A That's what I recall. Now, whether it was just before the advisory opinion came down or whether it was just after, I don't remember, but I think there was some activity during that period. I think we were fairly confident of our analysis and maybe we had, in fact, heard that it was coming before it actually hit. There was some activity. I don't remember what we did.

Q When you got it, what did you do then?

A We sent it to Tom, I believe. I think we sent it to Tom or the Senator and said something like "Here it is. This confirms our advice. And you may operate under the contract, just as we told you we thought you could operate under the contract. The Federal Election Commission has basically confirmed our analysis."

And we -- I think I suggested that they then get the Ethics Committee to also concur.

Q Who would you have suggested that to?

A Either Tom or the Senator.

Q And that would have been right about the time you received the opinion from the FEC?

A Just before, just after.

Q But do you know a time frame in which the Senator got back to you and told you about his conversation with Clinden Lee?

A It was early in the contract period. As I think I said earlier, I think it was late '84, early '85.

Q Okay. But I thought you said earlier that the Senator had not talked with Clinden Lee until after the FEC opinion was received?

A Right. Which --

Q And that was --

A I think we received that in December of '84.

Q Okay.

A And so I late '84 or --

Q Thereabouts. Okay.

A Well, if my memory's right, we heard it was to get involved in it later because I got calls from people who would say things like "I don't understand what's going on. This isn't clear to me. What's the basis? How's the amount? I called Diamond's office, and I don't -- it's just not clear."

And so I remember, whether it was one conversation or a series of, conversations in which I talked to -- I think it was Doug Kelley, but I'm not sure now who was in the office. And he said, "This is going to get -- this is going to get messy because Diamond's not -- his communicative skills are nil. And I'm concerned that we either have to terminate" --

Q I'm sorry?

A "We're either going to have to terminate the contract or we're going to have to improve the communications."

And so sort of by the forward fumble, we came upon the termination that when an appearance was going to be made, that we would get involved to make sure that, on behalf of Diamond, the communications got communicated.

And that's when I contacted Diamond and said, "Look, we'll do this for you, but we want to have our costs covered because we're the Senator's lawyer. And we're not going to -- it's not going to cost him any more money. So if you'll allow us to communicate for you, we'll communicate for you as your agent, not as your lawyer, but as your agent."

And so a system was worked out that sort of came together that we would, on behalf of Piranha, prepare a letter, send a letter to the group and say, "Diamond has exclusive rights to this time. Diamond will make the Senator available. You have to work out the fees for the appearance with Diamond. And all money has to be paid to Diamond. No money may be paid to the Senator."

Q It's your recollection that this came to your attention about the time Doug Kelley became the Senator's AA?

A Well, I -- '85. I don't remember when Doug came.

Q Doug came to work about May of '85?

MR. FULLER: May of '85.

THE WITNESS: Yeah, that's about right. May of '85.

BY MR. ABNEY:

Q So prior to that time, you would not have been involved in it?

A I don't recall any -- well, I have a general sense that, for a while, there was no involvement. My sense was that whatever was supposed to be being done was done. Diamond was out selling books and promoting books and trying to get it done with other publishers and book because Diamond can't just do what he's supposed to do or we have to clean up the communications. If it seems prudent to Diamond, we'll sit in the middle. We'll try to communicate for Diamond so that there's at least a likelihood that the people before whom the Senator will be appearing will at least not get upset with the Senator." So I saw our role as simply making sure that the communications were understood.

And so we simply developed a system that when somebody -- when there was an agreement that somebody would get the Senator's body, we communicated what we thought the Piranha Press agreement was: The Senator will appear, pursuant to the request of Diamond, not of somebody else. Diamond called the shots. Diamond set the fees. Diamond set the time. Diamond set the arrangement. Diamond had the right to command presence of books. Diamond had the rights to insist upon book promotion. In fact, we insisted that that be part of the letter and that no one misunderstand the basis upon which he's appearing. He's appearing to promote the publisher and the books.

Q Okay. So you were the Senator's attorney --

A Right.

Q -- and the publisher's agent in this regard?

A Yes.

Q Okay. What did you tell the people? As you got

Q Screw it up in what sense?

A Well, if -- since they didn't you -- you take a person in the Senate Office. They didn't know what the relationship was. They had no -- they just kind of heard about it. So they didn't know whether Diamond could compel the Senator to be there, whether books would be on display, whether books would be sold, whether they had to buy a copy of the book. They didn't know any of the arrangements. They just had a general sense of what it was.

And since they had misinformation, my advice to them was "Don't give any information. Don't give any specific information. Simply refer them." And that way, they can't be passing on any misinformation, although I think, in an effort to be courteous, many times they answered questions.

Q And the people that they were referring on were people who called in or wrote into the Senator's office and said, "We want the Senator to come promote his book"?

A I don't know how they decided which would go on to Piranha so I can't say "yes" or "no" to that. There was -- somehow in the process, there was a decision made that these people would be referred to Piranha.

Q And you didn't --

A How they did that, I don't know.

Q And you didn't give them any suggestions as to could have been signed, by someone in your office?

A Oh, now, you're -- no. I think what we did was we prepared the letters and sent them to Diamond.

Q Yes. That's what I thought you had told us.

A Thanks.

Q And I was getting confused here.

A Well, I'm confused, so -- no.

I think we simply typed them and then sent them to Gary.

Q Okay.

A Then Gary marked them on his calendar. Then he mailed them out.

Q And is this essentially how it worked over the entire two-year period?

A Yes.

Q Requests would come in to the Senator, be sent up, and be handled from there by your office?

A As simple as it may sound, my understanding of the way it was supposed to work, once we kind of figured out what some of the kinks were, people who wanted to have the Senator appear before them --

BY MR. ABNEY:

Q To promote his book?

A No. I don't think it was -- I don't think it was that clear and simple. It was that people requested his --

Q People who wrote in and said, "I want to give you an honorarium"?

A Some, no doubt. Some others didn't say it that clearly. They said, "We want the Senator."

I think a decision was made as to which would be Piranha. I don't presume to get into their head as to how they did that.

Once that decision was made, what was supposed to happen was the Washington's office -- the Washington office or any scheduling office was to simply mark -- they had to function in terms of marking the calendar. Otherwise, it would all get screwed up. And there, their involvement was to have come to an end because, since they didn't understand it, in an effort to be nice, they would say too much or too little. It was supposed to be off to Diamond. So it had to go -- it had to be calendared there.

(A previously unmentioned document was marked for identification as Exhibit No. 3.)

BY MR. BAIRD: (Resuming)

Q Yes. Let me let you look at Exhibit 3. And if you would just accept my representation to you that these are materials that were provided to us by the Senator's office? And I just went through and selected a sample of had a date, Wednesday, March 20th.

Q Yes.

A So if you would ask me, what would happen is that in February, I'd get a little note saying, "HEMA, March 20th." And --

Q You'd get a note, but not this letter?

A Sometimes. I don't specifically recall this one.

And then a discussion would be had about -- in the early days, it was, "This is a Piranha Press speech. You have to understand it is not honorarium in the traditional or -- sense that you were writing for it because it's -- he is not going to appear and talk about what you want to talk about. He's going to appear. He's going to talk about, among other things, his books. You've got to understand he's going to promote books. You've got to understand that he may have books in the foyer or he's going to have books someplace, and that the fee is not necessarily the traditional $2,000."

And then some kind of letter got generated signed by Gary, Gary confirming "You're appearing at this time, this place."

Q All right. Okay. So that one says "Accepted and tell Mahoney," but you're saying it may only have meant "Accepted" in terms of time and that you were to negotiate?

A That's my recollection, is that many times when that was a common reference to amount of money paid for anybody's appearance. And it began to develop a parlance that was used fairly universally for an amount of money that was paid for somebody to appear, and came to see it in other contexts as well as elected officials. So calling it an "honorarium," to me, didn't make it an honorarium.

And when someone said, "What does this mean?"; we said, "This is not an arrangement where the Senator comes to appear, with no strings attached. He has to appear under the limitations that we sought." That is, he is going to be promoting books. He is going to be promoting a publisher. And the money paid cannot go to him. The money goes to a publisher.

BY MR. ABNEY:

Q And he had to promote that book?

A He had to promote the book.

Q And he had to promote that publisher? And if he didn't do that, it was not a book promotion appearance?

A That's right. I mean, the basic -- if the Senator didn't, by doing something -- and there's all kinds of subtle ways that you can promote your books. But he had to do something in this context to promote books. So whether he held it up, pointed to it, and/or they were laying on the table, or there was a sign on the wall, or -- because we -- I remember some discussions in which it was

-- they clearly objected to putting a table. So we said, "All right. Then what we'll do is we'll put the poster on the podium" or "We'll just have the books on the side."

Q Who said "All right. We'll do that"?

A I don't remember.

Q Did Gary Diamond say that?

A I don't remember. I remember a discussion about folk saying, "We don't want to have a hoopla about the promotion of books."

(Off the record.)

BY MR. BAIRD: (Resuming)

Q So did you advise the Senator at any time that any of the things that you mentioned, holding up a book that he published, having the books that he published in the room, four or five of them, or having a poster somewhere around where he was appearing, that any of those things would be sufficient to make what might be an honorarium appearance become a book promotion appearance?

A No.

Q What did you advise him in that regard?

A We've been through it now a number of times. What I told him was "There's a legal distinction between honorarium and other forms of revenue," and that "Other forms of revenue which are acceptable are royalties from the sale of books and a stipend from appearances."

And we had requested and received an opinion that indicates that if he appears for promotion of the publisher, the publisher or the books, that that is an acceptable arrangement under which the revenue to him, the 50,000 annually, is not, by definition, honorarium. And so he must act within the confines of that agreement and opinion. And that's the safe course.

But we never got into a discussion about if he simply held up a book, that that was sufficient, nor a poster. I simply said that promotion is a subtle act and that you couldn't conclude -- each appearance had to be judged on its facts and that he had to promote either the publisher or the books and that it was up to him and us under each case to determine what that meant.

And some folks objected to a hoopla in terms -- I mean, in other words, if we had book sellers walk up and down the aisle,--I'm giving you an exaggeration that never occurred--they would say that's inappropriate for this group.

And then we would tailor the form of promotion to the kind of appearance. And we'd say, "Do you mind if we have copies on the dais?" And they said, "No." And we said, "All right. Then we won't put the -- we'll agree not to put the book table," or whatever it was, "out in front."

But I never went to his speech, so I don't know what, in fact, occurred.

MR. ABNEY: I'm intrigued, though, by the negotiations that went on that you're talking about?

THE WITNESS: I remember on occasion one or two people who said, "We understand what the" -- because they had written and said, "Send us what this is all about."

MR. ABNEY: Yes.

THE WITNESS: We sent the advisory opinion to them and said, "This is it."

MR. ABNEY:

Q "This is legit"?

A "This is our deal."

And they said, "We understand that. And we accept it. And we'll honor it, but you need to be sensitive to the way in which you're promoting."

We said, "All right. What's acceptable?" And they said, "Well, we don't want hawkers walking up and down."

Q And then you would take that to Gary Diamond, and you'd say, "Gary, is that okay in this instance?"

A Because Diamond had to send books and Diamond had to make arrangements. And so we said, "Diamond, you've got to make" -- our job is just facilitating communication. Whatever you do in terms of promoting the books and promoting your -- that's up to you. You get what you want out of this, and that's up to you. So you'd better well be sure you get books where they're supposed to go and promotional materials, and all of that."

Q And you would say to him, "This group doesn't want you to have a book promotion table there. Is that okay with you, Gary?"

A Right.

Q That wasn't a decision that you made at all? It was a decision that Gary Diamond made?

A Correct. Correct. I would communicate to the people that I believed it would be acceptable and then call Gary and say, "Gary, this is what they've asked for. You know, I've told them it's probably okay. Do I have to call them back?"

And Gary would usually say -- well, I shouldn't say "usually." I don't -- sometimes I think he said "Yes," and sometimes I think he said "No." I never knew what he was going to do.

BY MR. BAIRD: (Resuming)

Q Honorarium. At some point you'd become aware early in the process, May 21 of '85, early in the two-year period, that what have come to the Senator's offices as honorarium requests are now going to be -- I don't know. How would you describe it? They're going to be handled as book promotion appearances or they're going to become book promotion appearances? How did you view it?

A Well, yeah. What I -- how I viewed it was that, as is always the case, people didn't say, "This is an honorarium appearance. I'd like to give you some money." I mean, the way it came to be was there was a request for the Senator to appear before a group. And usually there was an offer to pay money. So it wasn't -- I mean, I would not characterize it the way you characterized it, was it's an honorarium appearance that became something else.

Q Well, a request for an appearance, --

A In my sense --

Q -- for which they would pay an honorarium?

A For which they would pay some money.

Q Okay.

A Which many of those people came to use the phrase, "We'll pay an honorarium."

So a request was made. They scheduled it in. And then Piranha would write back and say: You need to -- this is paraphrasing, and this is the music with the words. But the message was: In case you think this is an honorarium, it's not. This is an appearance at which me, the publisher, and the books that I'm promoting of the Senator are going to be promoted. Now, if you want the Senator under that -- under those limitations and if you understand it is not $2,000 in some cases, it is 5, and if you understand that you have to make the travel arrangements and that you have to have the tickets there, then that schedule, which has been approved by the Senate Office in terms of time, will be lived to by Piranha.

Q Well, it looks like in this case, doesn't it, on Page 4 of Exhibit 3, that they had actually agreed to an amount? Somebody had offered a $1,000 amount, and they had actually agreed to it?

A There -- I think --

Q Ann Kelly had, it looks like.

A I think that, in fact, Ann had on occasion said, "That's fine. We'll accept it."

Q Right.

A Whereupon, we said to these people, as far as I know, without exception, Ann had no authority whatsoever with respect to what would be discussed, the time, the place, the amount, the travel arrangements. So to the extent that she said that, she has no authority to do it, none.

She has the authority to book the Senator's time and reserve the space, but Piranha Press owns his body with respect to these appearances.

And if they don't accept the time and the circumstances, the means of the appearance, he will not be there. So it doesn't make any difference whether Ann said as if they knew what they were talking about when, in fact, they didn't. They were always trying to help.

So I said, you know, "Just stop that. Don't tell them 'yes' to a date until you know that Piranha has accepted it. Don't say 'yes' to an amount until you know that Piranha has accepted it." That was my general conversation with Tom.

BY MR. BAIRD: (Resuming)

Q If you had known on September 26th of 1984 that requests for honorarium appearances coming to the Senator's office would be transferred to the publisher and that book promotion appearances would be arranged consequently, is that something that you would have told the FEC, you would have felt material fact that you would have wanted to disclose to the Federal Election Commission? In other words, if --

A I don't think so, as I now -- my recollection of our analysis was that it is the form, substance of the revenue. And the source of referral was never discussed or suggested in any of the materials that we saw as a relevant basis for making that determination. So my recollection of my -- of our research and analysis would be that no, it would not be material.

Q Okay.

BY MR. ABNEY:

But if the question was ever asked of me, I think we'd go back to our advisory opinion, in which we said we are comfortable with the conclusion that so long as there is book promotion or publisher promotion and fees paid to the publisher and a stipendiary quarterly payment made, that that certainly is not honorarium.

Q So that the Senator, in fact, stood up and said, "This is my book. My publisher is Piranha Press," and everything else in the speech was exactly the same speech that he gave for an honorarium half an hour before? You have a Piranha Press appearance, and that whatever he got for that speech is, in fact, a stipend and not an honorarium?

A Yes. And if you ask me, "Mahoney, how can you? I mean, are we talking Vatican angels on a pin here?"; what made sense to me about that is the separation of the money.

That is, ABC, the American Society for the Promotion of Green Lawns, wanted the Senator to appear. They're paying a sum of money to a publisher, who is in the business of making money from the promotion of books and itself.

And it is, in fact, the publisher who has the direct relationship with the -- with the Senator, the elected official, not unlike, as I understood, ABC Radio Station having a direct relationship with Dole. I don't remember if it's Dole, but assume it's Dole. And to draw the distinction that the advertisers who, after all, are getting the benefit of Dole's radio program or television program are, in fact, paying for Dole is the same, to me, as somebody saying, "We will pay a publisher who can bring us the Senator." And what the Senator is paid by the publisher is really irrelevant.

That distinction to me made some practical common sense, legitimate distinctions. And so, as we read the literature and the advisory opinions, we believe that we're on safe ground in distinguishing between direct money by groups that get all the benefit, can use the money to effect the Senator as opposed to "Uh uh. This money goes over here."

It can be a large sum of money. It can be a small sum of money. But they don't know what he's being paid for that appearance at all, and they can't direct the means of discussion. There's a legitimate enterprise involved in promoting the books. So, as I looked at it, I thought it makes some sense to me. It makes some sense.

And then, as a lawyer trying to deciding how would you construe honorarium, my analysis was: The world of income is not honorarium. It's only a very narrowly defined form of prohibited income. So if you aren't the very narrow form of prohibited income, you've got to be on the good side, or the acceptable side.

I didn't mean to go on and on and on.

MR. BAIRD: No. I appreciate having your analysis because you're one of the few people in history who have gotten an opinion out of the FEC on what's honorary and what's stipend. There are five or six of them, and that's it. So I think it's very important to have your analysis of what you believe the law is.

THE WITNESS: Well, we have -- I mean, there's -- I remember seeing some of the -- you don't want to get into that now.

MR. BAIRD: All right.

THE WITNESS: This is your show. This is your --

MR. BAIRD: The advisory opinions that you --

THE WITNESS: No. It was -- yes.

MR. BAIRD: Yes, there we are, in Exhibit 2.

THE WITNESS: Well --

(Pause.)

MR. ABNEY: I don't think there's any need for you to have to evaluate all of them. It's just that there have been very few, very few patterns presented. And you're one of the people who's been able to draw the distinction -- to get the FEC to draw the distinction.

THE WITNESS: Well, as I understood the stipend, which is relative to the appearances, it is -- oh, here's one, a serialized fee paid by a magazine to a book publisher. It's a book royalty rather than an honorarium. That's serialized. That's the Moynahan one.

But there was one dealing with what I recall with Dole. Here it is. Here it is. Payments for appearing regularly on television and radio shows are not considered honorarium. Proxmire weekly contributed to "The Letterman Show" $25,000, not received in excess of $25,000. "The Commission concludes that the funds received as compensation for weekly television and monthly radio are not considered to be honorarium income, chargeable against your honorarium. The term 'honorarium' is defined as a payment of money or anything of value received by an officer if it is acceptance as consideration for an appearance, speech, or article."

MR. ABNEY: He certainly made appearances.

THE WITNESS: But -- well, that's what this was, too, a radio appearance. That was a radio appearance.

But it goes on to say, quote, "A payment for services on a continuing basis, including a salary or other compensation paid by news media for commentary on events, ratner than campaign of the individual compensated. That regulation expressly provides the term 'honorarium' does not include funds characterized as a 'stipend.'"

So, as we started putting these pieces together, it made -- it made legal sense to us that if you put together a fixed arrangement that is regular in nature and does not depend upon the number of appearances, so Diamond makes $800,000, it's all Diamond's. The Senator's is 50.

And it doesn't make any difference what the group pays him, whether it's 2,000 or 5,000 or 10,000 or 50,000. Anyway --

BY MR. BAIRD: (Resuming)

Q Had the Senator told you that he would like to do this if it was possible or did he tell you he didn't care whether you could find a way that he could make these appearances and make $50,000 a year or not? What did he tell you?

A His general sense was he didn't care. He said the income would be nice. You know, we had discussions about the income. He said the income would be nice, but my -- what I remember his discussion was, was that he was not principally concerned with his income. I was.

And he was principally concerned with national promotion, if he could do it, and dissemination of his ideas. And those seemed to fit together.

So when I said, "It seems to me that we can do this," his general answer was, "That would be fine, but get that advisory opinion."

Q Why were you principally concerned with his contract. We negotiated this letter with Diamond.

Q You negotiated the terms of that with Diamond?

A Right. Absolutely.

Q Okay. And you did that as the Senator's lawyer?

A Yes.

Q Okay. So why would the Senator care whether Gary Diamond, as publisher, gave him the tickets up front or whether the sponsor gave him the tickets up front?

A The only reason the Senator would care is if somebody wanted to use the Senator's office for anything other than scheduling, such as "Go buy the ticket and we'll reimburse you."

Now, most travel arrangements made by the Senate for the Senator were arranged through their offices, and they had to use their telephone and their time to make travel arrangements. So the Senator would care if his staff was making travel arrangements, which they didn't do.

Q With the handwritten Exhibit Number 7, also there's a typed Exhibit 9. But for purposes of this deposition, this is Exhibit 7, Page 1 and 2.

Is this the -- I want to make it a little bit clear here. Is this the typed letter that your office would prepare each time that you, as Piranha Press' agent, had reached an agreement with a sponsor for an appearance?

A I believe so. It may have changed from time-to-time, but this looks like it.

Q This is one of the forms that would be used?

A Yes.

Q Okay. And your office would fill in the blanks, essentially, on this; right?

A Type them.

Q You'd type them and --

A Send them to Gary.

Q -- send them to Gary without -- and Gary would put his signature on and mail it on to the sponsor?

A That's what I recall.

Q Your understanding, anyway?

A That's what I believe happened.

Q Okay.

A You look confused about the travel thing, about the --

MR. ABNEY: Well, I --

THE WITNESS: I don't want to get off of it if you still have some questions about it.

MR. ABNEY: I guess I'm just trying to understand.

BY MR. ABNEY:

Q The notion was that these travel expenses are going to be provided. They're going to be provided by the organization for which the Senator was making a promotional our contract. And you understand the nature of our opinion. And that's what we have. And, as we stray from that, if you stray from it, it's not as clear. So subject matter has to include promoting the publisher and the books."

BY MR. ABNEY:

Q And it was a question, really, of form, in a sense, that there had to be a reference either to the publisher or to the book, and if that was all there was in the speech that was related to Piranha Press, he said, "I'm here on behalf of Piranha Press, and I've written this book. Now, I want to talk to you. I've written this book, 'Neither Madmen Nor Messiahs.' Now, I want to talk to you about the Tax Code," that's a Piranha Press appearance?

A Yes. I'd like to characterize it a little bit differently. We've all seen the appearances on television when somebody comes on and they talk about their uncle and their aunt and what they're doing and driving trucks. Then they say, "Well, what else have you been doing?"

"Well, I wrote a book."

And so it's salesmanship at its -- at a high level. It's how do you -- first, they want him because he is a celebrity. So first --

Q They want him because he is a senator?

A They want him -- well, for whatever reason they want him. And they want to hear his views and no doubt, in part, because he's a senator. I mean, I don't think you can also distinguish that he's tall and gray-haired and speaks well. And there are some shorter guys that don't do as well. But they want him. And so it's an art form.

And I don't think it's arithmetic that if you do two minutes, it's book promotion, nor is it 35 seconds. I think there has -- I believe it's salesmanship. It's "Here are my views on Nicaragua" or "Here are my views on the Contras," and then segue from that to "By the way, if you are interested in my views on how intergovernmental affairs work and how Congress can better deal with" -- it's tough to go from the Contras to intergovernmental affairs, but I think if it's done right, you could say "You'll find my views in this current book on 'Neither Madmen Nor Messiahs.'" And in that -- and "This book is published by Piranha Press" or "I'm here on behalf of Piranha Press. This is a Piranha Press event."

I think each of the presentations depends upon their facts. I'm not suggesting you do an itty bit and it becomes a Piranha Press, nor am I suggesting if you do four hours, it's Piranha Press. I think if it's a good faith effort, it is.

It's -- so when I suggested--and I believe this--that there are soft forms of promotion, the way a hotel promotes itself with the emblem on the podium. And that's, nonetheless, a promotion.

And so we had discussions with people about what form of promotion was inappropriate for the group. And we tried very much to tailor the promotion consistent with the group.

Q You would have discussions with the group and then you would go back and have discussions with the Senator?

A No.

Q Who?

A The nature would be the letter would go. People would call up, and they'd want two things. One, this is not going to be a book promotion? We said absolutely it is going to be a book promotion. "If you have any doubts, he's not coming."

Q Did you tell them what the difference was between a book promotion and --

A Yes.

Q -- an honorarium appearance?

A At an appearance that's not, books won't be discussed. At this one, there may be books in the hall, books on display, notice, handing of -- holding of books. There will be a promotion of the publisher and books.

"So you need to understand that if you think this the vast majority of cases here?

A Yeah. Something happened. Something happened.

Q That's something more than the Senator saying, "I've written this book," --

A No.

Q -- "and if you want to read more about it" --

A No. That's enough. That, to me, is enough.

Q Well, I understand that's enough.

But is that what you thought happened in the vast majority of cases or did you think in the vast majority of cases, they were books on display, books --

A No.

Q What did you think in the vast majority of cases?

A I think in the vast majority of cases, it was a subtle presentation --

Q Yes.

A -- of the book and the publisher.

Q And you could have told the people who called in that expressed concerns about having a book promotion appearance, "Look, you don't have to really worry about this. The only thing the Senator needs to say is," and that's sufficient?

A Well, no. I didn't -- I concluded that I wanted the maximum leeway for the Senator; that is, based upon the nature of the group and the presentation, he could -- he

Wilson
5-24-89
50 pp.

UNITED STATES SENATE
Select Committee on Ethics
Washington, D.C.

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In the Matter of:                :
                                 :
Preliminary Inquiry concerning   :
Senator David Durenberger        :
                                 :
- - - - - - - - - - - - - - - - -x
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Wednesday,
May 24, 1989

Personal Interview/Deposition of:

MICHAEL C. MAHONEY,

a witness, called for examination by counsel for the Committee, pursuant to notice, commencing at 1:55 p.m., at Multifoods Tower City Center, Suite 4150, Minneapolis, Minnesota 55416, before William J. Moffitt, a court reporter, when were present on behalf of the respective parties:

APPEARANCES:

On Behalf of the Committee:

VICTOR BAIRD, Esquire
Counsel

Ex. 104

suspect, but do not know, that this is the first form of contract that Gary had proposed.

Oh, here it is. "And all proceeds shall be donated to the Veterans Organization."

Q Right, yeah.

A This I believe was --

Q This being pages 21 and 22 of --

A Page 22. I believe that this was --

Q -- Donna Hanbery's Exhibit One.

A -- the -- But again, I'm speculating. I just -- I'm getting far from what I know. This has the reference to no public funds.

Q Here again, the Senator had come to you through Tom Horner, as I recall what you told us, and really asked -- had three goals that he wanted to accomplish, you know, to promote his ideas, himself and to make some money if it was appropriate, if it was legal and ethical and appropriate. Is that correct?

A That's correct.

Q Okay. In exploring that possibility -- the possibility of there being a way to make money legally and appropriately -- did I understand from your earlier testimony that you developed the idea that there could be appearances for which the publisher could pay the Senator? Or who --

A No, no. It wasn't that the publisher would pay the

Senator for appearances. What we concluded was, two things -- that royalties from the sale of books and a fixed fee for -- I don't remember what the words were -- services -- it comes right out of several cases -- constituted a stipend. And that a contract which provided for a fixed fee and royalties, those forms of income did not constitute honorarium income and it was up to the publisher to generate the revenues by whatever form source they wanted to.

So we did not marry the idea of appearances with book sales. We didn't, as I recall it, we didn't say, Diamond, you know, you can put together a speaker's bureau and have appearances and generate the money. We said, what we can say fairly confidently is that the Senator is paid a stipend and a royalty, whatever those terms mean within the confines of the Federal Election Act, it's acceptable income.

It is up to you, Diamond, to generate the revenues sufficient to pay those two forms. We know that you can get two things. You can get books and the Senator. And I believe it was out of those two moving parts that Diamond generated the -- but again, I'm speculating -- Diamond generated the concept of, all right, I've got books and I've got the Senator, so I know that I can generate revenues from the sale of books and I know that I can generate revenues from the Senator's body -- maybe from tapes, maybe from -- I'm just, again, speculating.

Q Okay.

A He has to generate "X" hundreds of thousands of dollars out of which to take the risk of paying $50,000 annually.

Q All right.

A So what we said -- what I recall distinctly saying, we know -- We don't know. We're about as confident as we can be that if the Senator gets a royalty that that's not honorarium. If he gets a fixed income figure, that's a stipend. But Gary Diamond, you have only two components from which to make your revenues -- books and appearances. And recall either hearing from Donna or Gary directly or Sam directly -- I don't remember who -- that there was a reasonable likelihood in Diamond's mind that he could generate sufficient revenues to take that kind of risk.

Our conclusion was, that's his business; he's taking the risk; we aren't. He knows it. I think we presumed certain things and believed him.

Q At some point the idea of appearances and income from audiences, those two were as you say married. Right? By someone in this process.

A Well, all along I think we expected that there would be some form of revenue potential from appearances.

Q Okay. That's what I was asking, I guess. You knew that sort of --

A We suspected that there was going to be some, but how much, when, why, how --

Q Right.

A We didn't know.

Q Right. But you knew that at the time you went to the FEC and you told them about the Senator making appearances for the publisher and getting paid for it, and that was the income you wanted to find out if it was acceptable.

A No.

Q Right?

A No. No, our focus was -- I believe what we said in the letter, the Senator is going to be doing these things. He will be receiving two kinds of income.

Q Right.

A And we used what we believed was the understood literature, opinions, precedents, what existed as a body of law before the Federal Election Commission to make our request; and said, we believe we are within the construct of that literature -- those prior opinions. We focused only on the income to the Senator.

If the Senator receives a fixed sum of money, under arrangement with a publisher, for -- I don't remember the exact words -- we believe that that constitutes a stipend which we thought had a whole body of law related to it and a royalty which we thought had a whole body of law related to it. And said, if this is correct, please so advise and if we can be of any further assistance, let us know and we'll respond.

Q Okay. All right.

If I recall correctly, you were not aware, did not know, and it had not been contemplated by you at least that requests that came to the Senator's office for appearances would be handled through the agreement with the Senator's publisher. Correct?

A Requests --

Q For speeches or appearances --

A No, I don't --

Q -- that came to the Senator's office, would be referred to the publisher.

A I don't -- I think what I said before was, we didn't concentrate on that at all. Because from what we had seen it didn't seem particularly material --

Q Right.

A -- to us to know where the request went. It was the form of income that the Senator made. I don't --

Q Had anyone suggested to you at the time you requested the opinions from the FEC that requests could be referred from the Senator's office to the publisher for handling?

A No. But none of this was done in vacuum. I mean, the opinion was sent to Tom. There had to be a sense of understanding someplace that requests would be made through the Senator's office, the degree to which, the extent of which, I don't think anybody knew. But I think it's virtually impossible to conclude that no request would ever be made to the Senator's office. That's where he is.

Q Okay. So you're saying that at the time you wrote the request for an opinion to the FEC you had contemplated that request for appearances --

A No.

Q -- made to the Senator's office would be referred to the publisher?

A No. I'm saying, we didn't focus on it at all. We didn't. I didn't. My office didn't.

Q Okay.

A We did not concentrate on the mechanics of it at all as I recall. We looked at the income side to determine whether or not it was honorarium. We came to a legal conclusion that all the information we could find focused on the nature of the income to the Senator, not anything else. So we focused on that, we put our attention on it, we analyzed what existed and I don't have any recollection of a discussion, review period, a proposed analysis where it ever came up as to how the requests would be generated.

Q And as it developed, and after you got the FEC opinion, and the Senator started making appearances, in fact, the process developed so that requests coming to the Senator's office for appearances were transferred for handling under the contract. Correct?

A Yes.

Q Okay. Once that began obvious, as the mode of how the publisher would get his hands on groups who wanted the Senator to appear, do you recall any conversation where Tom Horner asked you for an assurance that that pattern of referring requests from the Senator's office to the publisher for handling was within the scope of the opinion that had been requested from the FEC?

A I don't have any recollection of a conversation like that. You asked me before if I had, or something like that, and it was -- I don't recall any such conversation.

Q Okay.

A I recall a conversation dealing with the politics of it, in which Tom said -- my recollection is Tom focused on the politics, saying high income to a Senator from honorarium is a politically risky circumstance and every Senator who gets high honorarium will have to deal with that issue. And he said, "I think there is a political risk associated with that."

But I also recall him saying, "But, Mahoney, that's not what we've asked you to analyze. I'm just passing that on to you and I'm not asking you to say anything about it." I'm not saying Tom and I never had a conversation like what you described but I do not now -- I don't have any recollection of a conversation like that.

Q Okay. So as we start the process of the Senator making appearances, requests being referred, did the Senator ever inquire of you as to whether or not the process, as it was actually working, in fact, was covered by the opinion that you had received from the Federal Election Commission? Did he ever bring the subject up?

A I think he asked -- I don't think he asked that narrow a question.

Q Okay.

A I think we had a couple of conversations in which he said generally, "Where do we stand?" And I said, "We've received the opinion and we believe that these forms of income are within the accepted exceptions to the narrow definition of honorarium." And I think we had that conversation again like a year later, as sort of a repeat of the conversation.

Q Okay. So it would have been at some point after requests from the Senator's office were being referred for handling through the agreement with the publisher you, as the Senator's attorney advised him that that process of referral and the money that he got from the publisher was a stipend. Is that correct?

A What I recall we said was, that nothing had come to my attention that would cause me to conclude that anything had changed with respect to the opinion. No one had suggested to us that anything was awry, anything was different, anything was other than what we had represented, anything that was different. No one had caused me to question the value of the opinion.

Q Okay. And you had that conversation with the Senator initially right after you got the opinion and then again about a year later?

A And, of course, I'm guessing at the time. I just recall a subsequent conversation.

Q Sometime --

A But not a specific conversation as, "Is it fine that we get requests for scheduling?" Because that's what we considered all of those, was simply a scheduling a request, and nothing more than that. You can look at the paper and suggest that it's dramatically more than that but as far as I was concerned it was a request to hold some time on a calendar.

Q When the matter broke in the newspapers in 1986 and there was a discussion of the Senator's arrangement with Piranha Press, did you all discuss it at that time again --

you and the Senator?

In other words, as I recall, some of those articles, they, you know, raised questions about the arrangement. Would you agree?

A I remember a 1985 article, which I believe was in the Wall Street Journal. I don't believe we discussed that one. I think that was the first. I believe there was a Times article. I don't believe we discussed that. So if you can give me a reference to the 1986 article.

Q The articles that were published in the Minneapolis papers in 1986.

A What was the gist of the --

Q The one -- Did you read the complaint that was filed in this case, the articles attached to that?

A No.

Q You did not? Okay.

Where they were just reporting on the arrangement between -- I would have thought it would have come to your attention. They were Minneapolis, St. Paul papers discussing the Senator's arrangement to receive payments from his publisher.

A So far there's several articles.

Q Right. And I'm saying, did any of those articles -- I'm not interested in any particular article. Did any of those articles, and there were several of them in 1986, ever prompt you to discuss with the Senator whether or not the appearances as they were taking place, and his income from the publisher, was within the scope of the opinion given by the FEC? Did the subject ever come up as a result of those articles?

A I do not recall a conversation focusing on -- and you said the appearances -- whether the appearances --

Q No, whether it was legitimate -- let's use that phrase -- for the Senator to make money for appearances and to be paid through the publisher for them.

A I remember that each time there was, whatever kind of activity that went on, we might revisit this. But I don't recall any specific conversations of, you know, have you looked at it again or reexamined it, or do you think it ought to be reexamined.

Q Yes, that's all I'm asking.

A No, I don't recall any.

Q Did any of those press articles ever prompt you --

A No.

Q -- to discuss reexamining the issue?

A No.

Q Or to discuss approaching the FEC again for clarification?

A No, because nothing has ever changed in my mind in terms of the analysis, the input, the conclusion.

explain this, send us a copy of the FEC opinion. We explained it and sent a copy, and then heard that speeches were cancelled.

Q Heard from the Senator's office or from the sponsor?

A I don't remember. It could have been either; it could have been both.

Q Okay.

Now on page 180 you were talking about some of the efforts that were made when people had questions about an appearance, to tailor the promotional efforts to the group.

A Yes, there were a few of those.

Q Do you recall that?

A There were a few.

Q How would the Senator know if some special arrangements had been made, like that, if you had tailored an appearance in some fashion? Would that be communicated to the Senator?

A I don't know. Usually it was communicated to Diamond. Diamond's contract provided for the promotion of books and --

Q Okay.

A What I remember about each of those were, people would make specific requests and I would talk to Gary Diamond and say, these people have requested that -- whatever the specific request was.

Q Okay.

A And then, is that all right, since he had the responsibility to make most of those things happen. The things that they were trying to tailor were within his control and purview. And so --

Q Like having books there on display?

A Like having books on display. I think that was generally what it was. Or there was the other -- Some specifically wanted books in advance. Some wanted a certain number of books.

Q Well, the kind of tailoring you were talking about I take it did not go to whether or not the Senator was going to speak on the subject of his book or going to talk about his books?

A No.

Q It went to the other kinds of promotional activities?

A Right.

Q Putting up a bookstand or whatever?

A Right.

Q Okay. I'm going to try to finish as quickly as we can here. On page 101, you're referring to "we" -- working out the arrangements for the $2,000/$5,000.

A Do you know where on that 101?

Q And you were saying, "So we developed a very simple

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UNITED STATES SENATE
SELECT COMMITTEE ON ETHICS
WASHINGTON, D. C.

- - - - - - - - - - - - - - - - - - - -x
IN THE MATTER OF :

PRELIMINARY INQUIRY CONCERNING :
SENATOR DAVID DURENBERGER :
- - - - - - - - - - - - - - - - - - - -x

DEPOSITION OF MICHAEL MAHONEY

Washington, D. C.
Tuesday, February 20, 1990

Deposition of MICHAEL MAHONEY, called for examination by the Special Outside Counsel pursuant to subpoena, at the law offices of Dunnells, Duvall, Bennett and Porter, 2100 Pennsylvania Avenue, N.W., Suite 400, at 2:00 p.m. before SHEILA M. LYONS, a Notary Public within and for the District of Columbia, when were present:

ROBERT BENNETT, ESQ.
Special Outside Counsel
FRANCES L. WETZEL, ESQ.
Dunnells, Duvall, Bennett & Porter
2100 Pennsylvania Avenue, N.W.
Washington, D. C. 20037
On behalf of United States Senate
Select Committee on Ethics.

JEFFREY L. SIKKEMA, ESQ.
Dorsey & Whitney
2200 First Bank Place East
Minneapolis, Minnesota 55402
On behalf of the Deponent.

VICTOR McEVER BAIRD, ESQ.
Counsel
Senate Select Committee
220 Hart Senate Office Building
Washington, D. C. 20510
On behalf of the Committee.

for him since 1984?

Incidentally, just for your obvious protection, you understand the Senator Durenberger has waived the attorney-client privilege?

A Yes. It is my understanding, his instructions to me were waive the attorney-client privilege.

Q I just thought we should have that on the record.

MR. SIKKEMA: Is that with respect to all matters?

MR. BENNETT: That is with respect to all matters before the committee and particularly Piranha Press.

BY MR. BENNETT:

Q Just describe generally the nature of the matters.

A They would be particular assignments. Obviously the Piranha Press matter, and then some assignments from time to time on a house purchase, a house sale, tax work, I think principally tax work, income tax work.

Q As far as you know, were you his primary attorney in Minnesota?

Q Okay. When is the next time you met him, if you remember?

A I don't remember the next time I met him.

Q Okay. Would you tell us in your own words, to the best of your recollection, how this Piranha Press thing got started?

A Yes. My recollection, and I should tell you it's very hazy and vague because it's so long ago, is that in the fall of 1984, I believe -- could be '83, could be '85, I don't remember the years -- but in the fall of the year, like '84, I believe the initial event was a phone call from Tom Horner, who was the chief of staff of Senator Durenberger, calling about a, generally about an arrangement that was either proposed or had been begun with respect to a book called "Neither Madmen nor Messiahs," and Horner's questions revolved around what, I believe there was a specific proposal in mind, but what were the opportunities and what were the restrictions with respect to a Senator selling or arranging for the sale of books, as a general sense of what the conversation was. That is how I recall the discussions which led up to this arrangement.

A In the area, again, with respect to --

Q Advising a public official about various rules, regulations, statutes, et cetera?

A No.

Q What did you say to Mr. Horner?

A As best I recall, I said, "we will look, we will see and call you back."

Q Okay. And then what happened?

A I think we did some research within the firm by taking a look at the various applicable laws and regulations with respect to our assignment, and I really don't remember what the assignment was, but it had something to do with a book arrangement, and then had a conversation with Mr. Horner in which we relayed the sense of what we had learned, and from that, we laid out several choices and from that, we cut down the number of choices, and from that, I think we began the work on the contract.

But as I said, I have a vague recollection that there was an existing arrangement between, or proposed arrangement between Gary Diamond and the Senator, and that arrangement, as I recall it, had something to do with a sale of books and a contribution of money to an organization that had a name like the VFW or some name like that, there was something proposed, and anyway, I'm just giving you a general sense of it.

Q So if I understand you correctly, it is your sense that when Mr. Horner called you regarding this book situation, it was your understanding that the Senator had some preexisting relationship with Mr. Diamond?

A I suspect he knew him. I'm not sure whether or not they had any business arrangement.

Q Okay.

A I'm not sure if this contract that I recall was proposed was in place, had been discussed, I just don't, I don't have a good sense of that.

Q What is your sense as to the capacity in which you were serving at that point? Was Horner calling you on behalf of Senator Durenberger as a social friend of the Senator, or was it reasonably clear to you that he was calling you to provide legal advice to the Senator?

A I believe it was clear it was with respect to legal advice.

Q And I gather there was -- I haven't seen any, nor is it necessary that there always be, but I haven't wanted or what the Senator wanted regarding the book contract?

A I don't remember whether it was a predetermined -- this is what we want, or whether it was reaction to -- as it developed, my sense was it was a reaction to it as it developed, from an initial broad task to getting some ends cut off as we moved forward.

Q I guess I'm trying to get some sense, if you were sort of the guy who said oh, you want a book contract, here are the things I think you should do and have, or whether you were getting input from the Senator's office as to what they wanted and you were sort of executing what they wanted?

A And unfortunately I don't remember a sense of anybody having a view that this is what they wanted, either we had a view of what we wanted or they had a view of what they wanted. It was a very broad task of if there is going to be a book arrangement, because there is a book or there is going to be a book, how can it -- what are the choices, how can we structure it. But that is -- and I don't remember any specific end in mind.

Q Do you have any recollection during this period of time of any discussions as to whether any moneys which were derived from the book contract, how they would be treated vis-a-vis limitations on Senator Durenberger, limitations by virtue of rules or regulations?

A I remember the fact that there were limitations. And that we did legal research with respect to what those limitations were, and we came to some conclusions about what those, the -- how those limitations affected income and what the exceptions to them were and that we passed that on to Tom, and I also recall a discussion about contributing excess honorarium to the Diamond organization, it was a designated organization, VFW or something, and again, I don't remember which preceded which, but I don't recall those discussions.

Q We have been unable to locate any publishing, book publishing or book contract agreement signed by both the Senator and Mr. Diamond at the same time. Do you know whether one, whether or not any such animal, any such document exists?

A My recollection is that there was a contract that was signed in counterpart. That is, there were signature pages signed by Diamond and I believe by the

A In a sense, in a broad sense.

Q How am I right and wrong? I want to be fair, I want to be accurate.

A Well, what I recall the sense of it was that -- what I recall the sense of it was, there was, there was a book that was either written or about to be written, and there was a publisher proposed, Gary Diamond, and the question was how to put the publisher together with the Senator in such a way that it could maximize the return as a business arrangement and not run afoul of any of the limitations.

Q So when you started, if I may use that word, started doing legal work on the matter, what had been brought to you was the idea of a book contract, and in fact a publisher was already in the mind of at least Mr. Horner and presumably Senator Durenberger?

A Well, I don't have a very good sense, but that is, today, what I recall about what was going on then.

Q Well, is there any question in your mind that you did not go out and look for a publisher for Senator Durenberger?

A No, there was a time when I was asked by the

Senator to go out and look for publishers, and that could have preceded the conversation with Horner. The specific assignment was the Senator said, I want to do three things. I want to publish books. I want to have a broad opportunity, or opportunity to deliver my message to a broad group of people, and making money wouldn't be bad, and maybe making money was at the beginning, I want to make money, do books and get my message. Those three were the pieces.

Q Did the Senator say that directly to you?

A Yes, the Senator said that directly to me. But I can't put that in time with before or after.

Q Well, did you find Piranha Press, or did someone else find Piranha Press?

A I don't think I found Piranha Press, I think Piranha Press was proposing an arrangement when I first came in.

Q At a certain point in time, an understanding or agreement was reached that Piranha Press would make payments to Senator Durenberger over a period of time in order to promote books; is that correct?

A It was a little broader than that, I think. I think it was promoting either the publisher or books. My recollection of what the arrangement was was to promote either the publisher, or the books, and I think the contract only made reference to one book, but I think other books were contemplated.

Q What did you understand to be involved in the promotion of the publisher?

A It didn't mean much to me. It meant whatever it meant. I didn't focus on that one.

Q All right. At a certain point in time, I take it, it came to your attention that Senator Durenberger would be making speeches before various groups of people for which payment would be received; is that correct?

A Are you talking about under the contract with Diamond's company?

Q Yes, under the contract with Diamond's company?

A Yes.

Q Do you remember how that came about, how the idea of speaking engagements came into the equation?

A No. I have no specific recollection of the idea of, now we will get to speaking arrangements. How it came to be, as I remember it, was we have some givens. We have a book that is either published or about to be published. We have a publisher proposing to pay for that book and would like to do others. And we knew that there were some limits with respect to income to the Senator. As I recall, we determined that royalties from the sale of books was not by definition honorarium. We then focused on what other forms of income the Senator could get, did not focus on where Diamond would get his sources of revenue.

My recollection is that our legal analysis was on the revenue to our client's side, and so we didn't focus so much on over the top of the meat grinder, but what came out the bottom, and we knew that the Senator would have to do certain things for Diamond, so as the contract got negotiated, I think the quid pro quo was Diamond would pay the Senator something, and the Senator would deliver promotional activities, promotion of the book with the expectation that books would be sold; Diamond would get revenue. The quid pro quo on the other side was Diamond would pay the Senator.

We knew that royalties were an acceptable form of payment, not otherwise limited. We then found that if the payments that Diamond were to make for the activities of the Senator were fixed in nature over a fixed period of time, they may well be stipend, which was not, by definition, honorarium. So I think the contract got negotiated to provide that equation. The Senator was obliged to make a certain number of appearances in promotion of the book, hopefully other books, and the publisher, for which the Senator would be paid a fixed sum of money, plus royalties, and now I have forgotten what your question was, which was something about how did we get to the payment arrangement.

Q I will pick up on it another way. Under the contract, as I understand it, there was no fixed number of speeches the Senator had to give; is that correct?

Educate me a little bit on that. I'm very confused about -- the contract specifies the amount of money, I gather, doesn't it?

A The contract, I believe, requires in the aggregate $100,000 plus royalties. My memory of the arrangements for appearances was that there had been a negotiated and agreed-upon number, and the number was in the neighborhood of 24, 25, 30, something like that, and moneys?

A If you are asking, and I don't think you are, but are you asking could I come to that legal conclusion today, could I arrive at that, possibly, but the analysis would be that without regard to promotion, that is the promotion of the publisher and the promotion of the books is not tied at all to the legal conclusion that a stipend in a contract with a fixed sum of money to it. But that would be, I don't recall doing that analysis.

Q Well, that is not really my question, but my specific question is, did you advise Senator Durenberger that when he gave speeches, it didn't matter whether he mentioned the book or not?

A No. As I said, I don't recall having that conversation.

Q And my next question is, is it your understanding, whether you remember that conversation or not, is it your understanding of the arrangement which the Senator entered into with Piranha Press, and your understanding about honoraria limitations which you say you advised on, that the Senator could give a speech, not mention the book or the publisher, and still treat this as

Q Okay. Why don't we go on the record.

What facts did you have, as you best can recollect, about what the arrangement was going to be, when you wrote the letter to the FEC?

A Facts at the time we wrote, for the request?

Q Right.

A We had a publisher, we had a book, we had a contract that was either agreed to or agreed to in principle, under which the publisher had agreed to, I think, publish that book and promote that book, and the Senator agreed to promote that book and the publisher for a number of appearances and for which the publisher was obliged to pay either an aggregate sum or an annual sum for a two-year period of time.

Q What about, you know, one of the facts you had, wasn't it that the groups before whom the Senator would be speaking would be paying a sum of money?

A We have been through this a couple times before. I don't recall any significant focus or discussion about that fact, and I don't remember whether it was because it was a matter of the fact presentation or if it was because it was our analysis of the law that it was the revenue stream to the Senator that was critical. An analogy, which I think is correct, is that a revenue from an article is honorarium, but you take 15 articles, and put it into a book and you sell the book, and the revenue for 15 articles is not an honorarium. So it's the form of the revenue, not the source from which the revenue is paid. Now I'm just offering that as an explanation as to why I don't think when we put the request together that there was a great deal of focus on whether or not there would even be money from appearances. I don't have a strong impression that that was a significant part of it.

Q Well, whether it was a significant part of it or not, and I certainly don't want to mischaracterize your testimony, is it your testimony that you don't recall whether at the time you wrote the letter to the FEC for an opinion, you don't know whether or not the Senator was going to be, the people were going to be paying money to hear him speak?

A As I sit here today, and as I think as I testified before, I think we knew that was a possibility, but it was -- in our view, that was Diamond's responsibility to generate whatever revenues he needed from whatever sources he could to pay the sums due.

Q To the best of your recollection as you sit here today, who was the first person who came up with the idea, as far as you were concerned, that you were involved with, that the Senator could make money by giving speeches --

A I don't --

Q -- to promote the book, that he could get money for giving a speech, promoting the book or his publisher; who came up with that idea?

A I think it came as a result of the work that we had done; whether somebody else picked it up and said, this is how it will work or whether we offered it, I don't recall.

Q Do you recall you or anyone else in your office discussing with Gary Diamond the economics of all of this, that Gary, you are paying 100,000 to the Senator and obviously you have got to get something in return, and those kinds of things? Did you ever --

A I did not. I don't have any recollection of discussions with Gary about the economics.

Q Well, under the agreement, what was your understanding as to what Diamond would be getting out of

Q Forget the concept of promotion. I'm asking you, did you give him advice that it was all right for him to appear with other senators and congressmen, not mention the book, and still treat it as a Piranha Press event?

A I don't recall giving, having a discussion about that, or that advice, I have no recollection of that at all.

Q Well, fine. Did Senator Durenberger send you checks to be passed on to Mr. Diamond?

A I don't think so. I don't.

MR. BENNETT: Let's go through some documents, if we can here. Let me show you what has been marked as Exhibit Number 1.

(Mahoney Exhibit 1 identified.)

BY MR. BENNETT:

Q Can you identify that? Do you remember receiving this from Mr. Horner?

A No, I don't. I remember some of the matters described in it, but I don't remember it.

Q You see the last paragraph, says "please advise on how we should structure speaking events connected with the promotion of the book that could potentially be income-producing to the Senator"?

A Yes.

Q Did you give advice on that?

A Yes, I believe this is one of the early discussion items which got to the Piranha Press arrangement.

Q Do you remember specifically what you said regarding how to structure the speaking events?

A No. I remember our assignment to be relative to the book arrangement between Piranha or to Gary Diamond and the Senator.

MR. BENNETT: All right. Let me show you what has been marked as Exhibit 2.

(Mahoney Exhibit 2 identified.)

BY MR. BENNETT:

Q Do you remember receiving that from Mr. Horner?

A Do I remember receiving it?

Q Yes.

A No.

Q Do you see in the second paragraph, it's Mr. Horner, isn't it, who suggests that there be something included in the contract that makes it clear that someone know if he reviewed it. I believe a copy was sent to the office for their review.

Q Now, at this point in time, when you sent this letter dated October 19, 1984, you were aware, were you not, that the groups before whom the Senator would be speaking would be paying fees of some kind to him; is that correct?

A I'm not sure.

MR. BENNETT: Okay. Let me show you what has been marked as Exhibit 3. I will ask you to please look at that and tell me if you can recall receiving that.

(Mahoney Exhibit 3 identified.)

THE WITNESS: Are you asking me whether I recall receiving it?

BY MR. BENNETT:

Q Yes.

A I don't.

Q It's addressed to you; is that correct?

A It is.

Q Correct address; right?

A Yes.

Q All right, now, if I understand paragraph 1, would you agree with me that what that essentially says is that the Senator's office accepted a group of honoraria speeches and that now that you had this agreement with Piranha Press, that these were being forwarded to you for handling; is that correct?

A I have just finished reading it. What was the question again?

Q Paragraph 1, it appears the Senator, that is, that the Senator or his staff accepted various requests for him to give a speech as honoraria events, and that now that there's an agreement, they are forwarding it on to you in connection with the Piranha Press agreement. Isn't that a reasonable interpretation of that paragraph?

A Maybe. Seems like a reasonable interpretation. I don't remember what happened.

Q Do you remember getting a group of acceptances from the Senator's office that had been accepted as honoraria events which were now to be handled by you in connection with the Piranha Press agreement?

A No. What I remember was, there were, there was a period of time in which there were some dates that had been marked, and, but that was all. That there were some another complaint saying the marketing efforts just aren't what they should be.

Q Did the Senator ever complain to you or anybody on his staff complain to you about what was perceived as "heavy-handed treatment" on your part in dealing with --

A Yes. Yes.

Q Tell us about that.

A There were complaints by -- I got some direct complaints from people who had requested speeches, saying that the amounts requested were too high, and as I remember the arguments, they were that an honorarium is $2000, and not $5000, but that is the only complaint that I remember, was related to money. I don't remember any complaints about anything else.

Q Do you remember in 1984, was it you who came up with the proposal, which you brought to Senator Durenberger, to the effect that he could make money from Piranha Press by making appearances?

A I don't remember the precise genesis of it. I think the best characterization is it came as a result of the discussions. It started with Diamond and Horner and it progressed.

ADDENDUM TO DEPOSITION OF Michael C. Mahoney

DATE OF DEPOSITION February 20, 1990

Page	Line	Incorrect Wording	Correct Wording
52	15		The response was only
			related to Piranha Press
			speeches, not all speeches
			See clarification page 63
53	3		Same correction as line 15
25	18		add "and publisher" after book
29	17		add "Piranha Press" before speeches
34	13	"The decision"	"I believe the final decision"
42	7		"I don't recall ever giving
			that advice to him"
42	12	"about that"	"giving that advice"
66	10		"I don't remember doing so"

CERTIFICATE OF DEPONENT

I hereby certify that I have read and examined the foregoing transcript of my deposition and that with corrections made by me, if any, the transcript constitutes a true, accurate and complete record of the testimony given by me.

page 1 of 1

(Signature of Deponent)

Sworn to and subscribed before me this 9th day of May, 1990

TAMARA K. HARDY
NOTARY PUBLIC — MINNESOTA
HENNEPIN COUNTY
My Commission Expires Aug. 27, 1992

Tamara K Hardy
Notary Public in and for

My Commission expires 8/27/92.

TRANSCRIPT
OF PROCEEDINGS

UNITED STATES SENATE

SELECT COMMITTEE ON ETHICS

ORIGINAL

IN THE MATTER OF:

PRELIMINARY INQUIRY CONCERNING
SENATOR DAVID DURENBERGER

DEPOSITION OF MICHAEL C. MAHONEY

(CONTINUED)

IN CAMERA

Washington, D. C.

Tuesday, April 17, 1990

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DEPOSITION OF MICHAEL C. MAHONEY

(CONTINUED)

[illegible]
[illegible]

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UNITED STATES SENATE

SELECT COMMITTEE ON ETHICS

- -x
IN THE MATTER OF :

PRELIMINARY INQUIRY CONCERNING :
SENATOR DAVID DURENBERGER :
- -x

DEPOSITION OF MICHAEL C. MAHONEY (CONTINUED)

Washington, D. C.

Tuesday, April 17, 1990

Deposition of MICHALE C. MAHONEY, called for further examination by the Special Outside Counsel pursuant to subpoena, at the law offices of Skadden, Arps, Slate, Meagher and Flom, 1440 New York Avenue, N.W., Ninth Floor, at 10:04 a.m. before BARBARA L. WHITLOCK, Court Reporter, when were present:

ROBERT S. BENNETT, ESQ.
Special Outside Counsel
FRANCES L. WETZEL, ESQ.
ABIGAIL JOHNSON, ESQ.
Skadden, Arps, Slate,
Meagher & Flom
1440 New York Avenue, N.W.
Washington, D. C.
On behalf of United States
Senate Select Committee
on Ethics.

-- continued --

APPEARANCES (CONTINUED):

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JAMES FARRELL
Senator Rudman's ~~Staff~~

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Dorsey & Whitney
2200 First Bank Plaza East
Minneapolis, Minnesota 55402
On behalf of the Deponent.

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Q You previously received a subpoena from the committee?

A Yes.

Q And responded to that?

A Yes.

Q Do I understand correctly that you served as counsel to Senator Durenberger in connection with certain transactions involving his condominium in the 1983 to '89 time frame?

A '84, I believe.

Q Let me ask --

A No. '83 is correct.

Q When did you first learn of the condominium?

A I may have heard of it before I was actually asked to do anything in connection with it.

Q And when were you first asked to do anything in connection with it?

A My recollection is in the last part of '83, November or December of '83.

Q What were you asked to do at that time?

A We were asked by Senator Durenberger to basically close a partnership agreement that he had described to us that he had entered into with Roger Scherer.

Q Could you tell us, please, how the partnership agreement had been described, was described to you by the Senator?

A It was a very brief meeting. And I would like to remark at the beginning, my recollection of most of this is very, very foggy. It was so long ago I have some memories of certain transactions that are pretty good but others are fairly foggy and hazy.

My memory of this is that we had a brief meeting in my office, at which the Senator said he had entered into a partnership agreement with Roger Scherer and he had asked that it be taken care of and closed, but it hadn't been done, would we please take care of closing that transaction, basically finishing that which had already been undertaken.

And I said we would. I think at that meeting there was a lawyer in my office named David Steingart. I think there were three of us present.

Q Was this the first legal work that you had done for the Senator?

A I think it was, but I can't be certain.

Q I believe you indicated that the Senator -- this was a personal meeting between the Senator, yourself, and Mr. Steingart at your office; is that right?

A I think so.

Q Was the Senator present? Are you certain that the Senator was present at this meeting?

A I am not certain, but that is how I think it happened. That's how I remember it right now.

Q And the Senator indicated to you that he had previously asked someone else to do this partnership closing; is that right?

A Yes.

Q Who was that?

A I believe that there were two lawyers who had been retained: one, Randy Johnson; and the other, Richard Langlais -- L-a-n-g-l-a-i-s. I did not know Langlais. I had met Randy Johnson.

Q In what connection?

A I don't remember.

Q What was the partnership arrangement or deal as it was described to you by the Senator?

A The description was fairly short and curt, and my memory is that the Senator he and Roger Scherer had agreed to combine their condominium units into a joint form of ownership and would share the expenses. And I believe we were told that the partnership agreement had been drafted but that it had not been closed.

Q And what do you mean when you say it had not been closed? What is your understanding of that activity?

A It had not been executed; the partnership agreement had not been executed.

Q Was it your understanding that the Senator had approved the partnership agreement that had been written?

A The basic terms of it, yes.

Q Did the Senator indicate why the agreement had not been closed?

A No. He just indicated a sense of frustration that he had wanted it to be done and it hadn't been done and here it was December, and just asked if we could please finish it up.

Q Did he describe to you his purpose in entering into the agreement?

A I don't remember any discussion about -- about any of his intentions or purpose.

Q How about Mr. Scherer's?

A No. I don't remember. I don't remember him describing that.

A Mr. Mahoney, let me ask you to take a look at the binder which I put in front of you.

In recognition of the fact that some of these events are historical, we have put together a grouping of exhibits, some or all of which we will refer to during the deposition. Many of these are documents that were produced by your office to the committee in response to the earlier subpoena.

Let me ask you, if I could, to look at Exhibit 1 and see whether this helps to refresh your recollection about some of these events at all.

A What was the question? Just to look at these and see if this helps?

Q Have you seen this before?

A Number 1?

Q Yes.

A I believe I remember seeing the cover letter. I cannot say that I remember seeing the other.

Q Were you aware that at one point in time Mr. Scherer and Senator Durenberger had discussed exchanging the condominiums rather than putting them into a partnership?

A Yes.

Q How did you become aware of that?

A I don't remember exactly when I became aware. But my sense of it is that the Senator and Roger Scherer had talked initially about an exchange of their units, but that they had decided against an exchange, and by the time we first talked about it they had indicated to us that at the end of July they had decided on a partnership and had acted in accordance with that intention.

So my sense of it is that I became aware of it later, but I cannot put the time.

Q Later than what?

A Later than our first meeting in December.

Q The material that is reproduced as Exhibit 1 was provided to the committee by your office in response to your earlier subpoena. I wonder if you might be able to tell us why it might have been in your files?

A I can't be certain, but this doesn't bear our stamp. And our usual practice is that when items are mailed to us or received from outside of our office we stamp

A I recall discussions about the residence change, but not about changing it. I don't recall anything before it actually was moved.

Q Did you advise the Senator to change his voting registration to Avon?

A No. No.

Q Let me ask you to look, please, at Exhibit 3. I would like you to look at the attachment to that and tell me if you have seen this partnership agreement before?

A I can't be certain, but it looks very much like a copy that we have in our files, which I believe came from Langlais' office. I cannot be certain that I have seen this copy before.

Q But you have seen previously a partnership agreement prepared by Mr. Langlais or someone in his office for the Senator?

A I believe it came from Langlais. It looks like this one.

Q Did you draft a partnership agreement for the Senator in connection with condominiums?

A I didn't actually draft it.

Q Who did?

A David Steingart did the drafting. And I believe it was principally taken from the Langlais -- what I call the Langlais partnership.

Q Was Mr. Steingart working under your supervision or at your direction in this regard?

A Yes.

Q Why was this partnership agreement not used? Why did Mr. Steingart draft a new agreement?

A My sense of it is there were some slight provisions of the partnership which we wanted to modify.

Q What were they?

A I don't know. I don't know what they were.

Q You don't have any recollection at all as to why it was that you decided a new agreement was necessary?

A As I said, I think there were some provisions, as we looked at them, we would change them. Our professional judgment was that we would write it slightly differently in terms of some technical terms. If you compared the two, I think you would find that there were some changes in the internal sections of the document. But I do not know what they are.

Q The partnership agreement that Mr. Steingart questions are about the time that this was going on.

Q 1983, early '84 time frame.

A No.

Q When did you discuss it with Randy Johnson? At some later date?

A I know we discussed it when we had this question-and-answer session about what happened and when.

Q What did Mr. Johnson say about this issue in that session?

A My sense of what he said is that he had looked at the question about reimbursement and had given the Senator advice about reimbursement.

Q And that he had done so in the 1983-84 time frame?

A Yes.

Q Did he tell you what advice he had given the Senator then?

A No. No, he did not.

Q Let me ask you to look at Exhibit 4. Is this your handwriting?

A No, it is not.

Q How about the second page of this exhibit?

conversations?

A I believe both. I believe we had one meeting and one telephone conversation. But I just cannot -- I can't be certain as to --

Q What do you recall of the telephone conversation?

A Basically the same conversation two different times. What I recall is the sense of the transaction being given to us: The Senator entered into a partnership with Roger Scherer; this was supposed to have been done some time ago; it hasn't been done; will you just please get it done; here are the elements, two units combined, and here is the format of the partnership.

And as you raised the question about the lease, presumably there was lease information, "Would you please just get it completed?"

A Did the Senator indicate why it had not previously been completed?

A I don't remember any basis for --

Q Did you have any conversations with Gene Holderness about this transaction?

A Yes.

Q Describe those conversations to me, please.

A I cannot identify a specific conversation, but I have had several with Gene about both his memory of what happened, the sequence of events. I think we had several conversations over, I think, a long period of time.

Q You have had several conversations with him about his recollections within the last, say, six or seven months?

A I think so. I will try to anticipate. At the time that the questions were being asked about what happened, I think I had a conversation with Gene.

Q What do you recall of that conversation?

A I asked Gene what he recalled, and he relayed the basic facts as he remembered them to me.

Q Which were what?

A That in the summer of '83 he and Roger Scherer had proposed to form some joint enterprise with respect to their two units, that an exchange had been discussed, proposed, that Randy Johnson had been consulted, and I think particularly about per diem, that Richard Langlais had been hired, I believe, by the Senator to draft a partnership agreement, that we had been asked at the end of '83 to complete it. And that was basically the sense of the conversation.

A I don't know whether I would characterize it that far. The assignment, as I understood it, was fairly narrow; and that was: Here is the substance of our transaction, finish it. And I didn't take it as understanding that we were to advise him on all aspects of the transaction.

Q You were to draft the partnership agreement, the final partnership agreement; is that right?

A Yes.

Q And you were to draft the final lease agreement; is that correct?

A I believe so but --

Q And you became responsible for insuring that the deal was closed; is that right?

A Yes.

Q And Mr. Johnson, I take it, played no further role in the matter in terms of drafting agreements or drawing the matter to closure?

A My sense of what was going on was that Randy had played a significant role prior to our involvement and that he had information and counsel that we should call upon. So we played some role in connection with finishing the transaction, and I think some of it was information, some of it was transactional structuring, but I am not sure what it was.

My memory is that he had some information that we were lacking.

Q It sounds like you acquired some historical information from him which you then used to help make the decision about how the deal would be structured?

A Yes. Yes.

Q Am I correct in understanding the Senator was looking to you to make sure that the matter was brought to closure, the deal was structured as he had wanted, and closed?

A Yes.

Q And that was your understanding as well?

A I think that's fair, yes.

Q So while you may have been taking information from other lawyers or other players, you ultimately were responsible to the Senator for this and you were the person to whom the Senator was looking to for that; is that right?

A I think so.

Q What was the structure of the transaction that you adopted for the Senator?

A I think we were given a set of circumstances, and the given was that Roger Scherer and Senator Durenberger had agreed to combine their units into some form of joint ownership, and that other than making sure that the paperwork was done, we looked at and advised him with respect to certain tax aspects of the transactions. And I think that is the only significant input that we had that we asked him to adopt, which was probably in the nature of the changes that were made in the partnership agreement.

And so when you ask the question about adopted, I think we took certain information that was given to us, effected that, and added a few points principally related to business structure partnership and tax aspects.

Q From a tax perspective, was this a beneficial arrangement for the Senator?

A I think so but --

Q That is how you structured it, I would assume. Is that right?

A Given the structure, we wanted to make sure that there was nothing in there that created any difficulties. I don't believe it was a tax-driven transaction.

Q What was it driven by?

the sense of it.

Q Did you discuss with him during any of those five conversations the sale of the condominium to Mr. Overgaard?

A Yes.

Q And what were those discussions?

A They were basically of the same nature. He said, "Look, there was a basic core to this transaction," and that was his understanding of it.

Q What was the basic core to the transaction, as he described it to you?

A The basic core to the transaction was a purchase of the unit by Paul at a price and a lease of the unit by Durenberger at a price. And we talked about the fact that it didn't get done on time and --

Q What was that conversation?

A Basically he said, "Look, the fact that it wasn't done the moment that it had been agreed to, in his mind didn't change the basic core of the transaction; that is, that there was a basic agreement to buy the unit and lease the unit."

MR. MAGNUSON: Can we take a short break?

MS. WETZEL: Let's take a break now.

Mr. Overgaard?

A   No. This talks about 1985?

Q   Are you referring now to Exhibit 24?

A   Yes -- well --

Q   Exhibit 24 is a piece of paper bearing the date July 18, 1985. Exhibit 16 is a memo to Senator Durenberger from Heidi, presumably Heidi Shaw in his office, dated May 2, 1985.

(Pause.)

A   Let me say I recall an American Express problem, but I don't recall anything -- and all I recall is something about American Express. Something about difficulty in paying them.

Q   Was this one of the Senator's American Express bills?

A   I don't know if it was the Senator's or the Volunteer Committee's American Express bill.

Q   Why would your office have become involved in either matter?

A   I don't know, and I don't know whether I just heard it in passing or someone asked us to do something.

Q   In 1985, Mr. Mahoney, you helped to establish a blind trust for the Senator; is that right?

A Yes.

Q And you are currently serving as a trustee of that trust; is that correct also?

A Yes.

Q Could you tell me, please, did you advise the Senator to create a blind trust?

A Yes.

Q Why did you provide that advice to him --

MS. WETZEL: Off the record.

(Discussion off the record.)

BY MS. WETZEL:

Q Why did you advise the Senator to establish a blind trust?

A My recollection of the conversation was he had some money, some cash, and he had indicated he wanted to do something in investing that money but didn't know how to go about doing it, and asked me if I had any suggestions.

And I responded by saying that I would be willing to invest that money for him in stocks and bonds, but that my understanding was in order for him to do that a blind trust had to be created so that he would be free from any conflict of interest with respect to those investments and he could not make the investment decision.

And that was the genesis of the formation of the blind trust.

Q What was that understanding premised upon?

A Mine?

Q Yes.

A Just a basic sense of the rules. It was not after any research or examination. This was the beginning of the discussion. He indicated he had some cash. He indicated he wanted to invest it. I said I would be willing to do that, but that my understanding was in order to protect him from any claim of conflict of interest a trust had to be created.

Q The Senator's interest in the partnership was also made a part of that trust agreement; is that right?

A Yes.

Q Why was that?

A I have tried to recall how that came about. I think it was an afterthought. I think what happened was that the principal focus was the cash that he had, but then going from that I think the idea basically came from documents we had seen in preparing the blind trust and we saw that other Senators had had -- had contributed interest in real estate partnerships that they had. It seemed like a good idea.

The sense was that if there was any cash that ever came from the sale of the unit, if there was any cash left over, that cash could be invested. So my recollection is it was just an afterthought.

Q What was your understanding, Mr. Mahoney, of the limitations, if any, on your ability to communicate with the Senator about the disposition of assets that were part of the trust?

A My understanding was that there was a limitation between my ability to talk to the Senator about disposition of -- or investing of money in the blind trust. So that from that I took it to mean that the cash which I received when invested in stocks or bonds, the decisions to invest were made by me without communication with him.

Q Did you understand there to be any limitation on communications with regard to other assets that were part of the trust other than the cash and stock transfers?

A I don't remember any.

rules that govern blind trusts?

A I asked a lawyer in my office to basically prepare a blind trust and effect the transfer to the blind trust.

Q Effect the transfer of what to the blind trust?

A Physically effect the blind trust, not transfer, but make it a reality for a blind trust involving the -- first the assets and then later the cash -- I think there were three assets perceived by me to be basically passive assets. His interest in the real estate and one other thing that he had. I don't remember the name of it anymore.

Q I am somewhat confused, Mr. Mahoney. The original intent behind the blind trust was to help the Senator avoid a conflict of interest. How was that intent served by placing the partnership interest into the blind trust?

A Oh, I don't think it was. I think it was an afterthought. The afterthought was it appeared that at least one other Senator had transferred real estate interests into his blind trust. From that I deduced that the probable purpose was if there was a sale of that interest, partnership interest, or there was otherwise any flow of cash from that, it would then be in the blind trust and that, in turn, could be invested like the first cash. It was not a critical focus. It was an afterthought.

Q Would that have included income from the partnership itself or only income from distribution of the assets within the partnership?

A I think only from the sale of the partnership interest, not from operations.

Q Did you as trustee ultimately take title to the Senator's condominium?

A I think there is a deed filed that reflects that.

Q When was that deed prepared?

A That is the '85 deed, 1985 deed that we are talking about.

Q Let me ask you to look at Exhibit 20. This is a copy, a certified copy of the deed filed with the Register of Titles, which reflects the transfer from the partnership to you as trustee of the Senator's condominium Unit 603. This document was prepared by your office; is that right?

A Yes.

Q When was it prepared by your office?

A I don't know. I presume it was prepared in 1985.

Q Was this memorandum prepared at your direction?

A Yes.

Q This reflects, does it not, that there is some consideration given to having Mr. Holderness serve as a trustee as well?

A It does.

Q Mr. Holderness ultimately did not serve as trustee on the trust, did he?

A That's right.

Q Why is that?

A I don't remember.

Q Did you discuss the contents of this memorandum with the Senator?

A I am hesitating because I am trying to think if I ever had a conversation with him, and I don't recall any conversation. So I would tend to say no.

Q Your office prepared the trust agreement; is that right?

A Yes.

Q Did you ever have a meeting with the Senator in which you reviewed with him the terms of the agreement?

A Yes.

Q What was your understanding of your role as trustee vis-a-vis the Senator's partnership interest?

A Basically to hold it. That was it. I perceived of that as if it were a passive, almost as if it were a security akin to a limited partnership interest. That is the closest thing that I can describe that relates to the investment. And so my responsibilities were basically to hold that interest and ultimately I was looking to any distribution or sale as a source of income from which to make further investments, those investments being blind.

He knew there was a partnership interest and it was only if the partnership interest was ultimately disposed of that there would be the cash that again would be invested in a form that be beyond his review.

Q And you understood at this time that the Senator was staying overnight in the condo during trips to Minneapolis?

A Yes.

Q Right? And he was claiming reimbursement from the Senate for some or all of those overnight stays?

A Yes.

Q Did you have any discussions with the Senator about whether or not that activity was consistent with the concept of a blind trust?

A No.

Q Did you have any views on that yourself?

A No.

Q Did you ever think about that?

A No. Again, my sense throughout all of this on the question of reimbursement was for substantially all of the time period I was not asked to review nor did I review, pass upon, approve, comment on, reimbursement. What I described is the lore that pervaded the whole issue of reimbursement, so-called 35-mile rule.

Q I want to discuss that in a little more detail. But before we move on to that, let me ask a few more questions about the trust agreement.

If you look at Exhibit 23, this is a memorandum to you from Mr. Schley, dated July 18, 1985, which suggests that there was consideration given at one point of transferring the Senator's interest to Piranha Press, that contract to the blind trust.

Why was that not done?

A I don't remember.

I just think it is a typographical error.

Q And on the next page?

A The question being is item 3 the same as item 3?

Q Yes.

A Yes.

Q Mr. Mahoney, when did you learn that Mr. Scherer wished to terminate the partnership with the Senator?

A The last part of '86, I believe, the last part being October, something like that.

Q And what role did you play in that termination, and when?

A I think that I talked to Roger Scherer and he told me he wanted to get out of the partnership, get his unit back basically out of the partnership. And I asked him whether or not he had communicated with the Senator, and I think he said he did. And my role then was to discuss it with the Senator, ask his views, and take his instructions. And we ultimately prepared a quit claim deed transferring the unit from the partnership back to Roger Scherer.

Q And what did you further do for the Senator in connection with his condominium unit from that point forward?

A I don't know what you mean, what did I --

Q The condominium ultimately was agreed to be transferred to Mr. Overgaard; is that right?

A Yes, ma'am.

Q When did that first come about?

A Oh, boy. I have a sense of the sequence.

Q What is that sense?

A This is the best I can do in terms of the transactions. If Roger said that he wanted to get his unit back out of the partnership, sometimes the question was asked by us of the Senator's staff as to what, if any, difference that made in terms of the Senator's reimbursement. And we looked at that question.

We had a lawyer look at the question and the very narrow focus of the question was, assuming that there was a partnership, assuming that the partnership had been reimbursed, what difference would it make if a partner left?

And we indicated that our initial research indicated that it made no difference on that very narrow-focused, precise question.

Q It made no difference to the Senator's ability to get continued reimbursement from the Senate?

A Yes. But you need to understand the assumption -- as I understand the memo.

Q Why don't we --

A Then the next focus was I had a conversation in which I said I think that you need to understand that we have not concluded that the Senator was entitled to reimbursement under the prior arrangement. And then we looked at that question, concluded that a sale of the unit, a sale of the unit would accomplish the purposes that the Senator had set out.

That is, w[illegible] "Here are your choices: You can sell the unit, you can take the cash; you can sell the unit, rent the unit; various alternatives." And from that, the alternative of a sale and a lease-back was discussed.

Ultimately there were discussions with Paul Overgaard about a purchase and a sale. I think that was your question.

Q When were those discussions?

A My recollection is the discussions occurred the last part of '86, November-December of '86.

Q Did you participate in those discussions?

A I participated in some discussions.

Durenberger, Roger Scherer and myself, outlining the events in the memorandum.

Q It states in the first paragraph, does it not, that the partnership was dissolved as of March 31, 1987?

A Yes.

Q Did you direct Ms. Stow to basically close the partnership accounts or books as of March 31, 1987?

A I don't think so. I don't think I had any conversation with Ms. Stow about that.

Q Did you talk to Mr. Scherer or the Senator about the timing of the dissolution or termination of the partnership?

A No. I don't remember any conversation with them about that.

Q Do you know how the March 31, 1987, date was selected?

A No. I don't.

Q You testified earlier, Mr. Mahoney, that as a follow-up to one of your conversations with Mr. Kelley he came back to you and asked you about Mr. Overgaard possibly purchasing the condominium. Do you recall that?

A Yes.

Q What happened after that? What did you do in response to that?

A Again I can give you the sense of what happened, my memory of the basic elements of it. I talked with the Senator and I talked with Paul Overgaard, and I probably talked with Doug Kelley.

And I learned that Paul spent three or four days in Minneapolis, a month or six or seven or some number of days in Minneapolis per month, that he was interested in having a place that he could stay that was more his own than a hotel, that he was interested in buying the Senator's condominium provided that the price was acceptable to him and the terms were acceptable to him, and provided that there was a lease arrangement which covered a substantial amount of the portion which would not be related to the time that he was there.

So he wanted to have a purchase at a price that he thought was fair and a place that he would consider his own while he was there.

And I had a conversation with the Senator in which I said if Paul purchases, what Paul is looking for is a price that is -- that he considers fair and terms that are fair. And my recollection is that an agreement was reached with Paul where Paul would purchase for approximately $50-53,000, $55,000. I don't remember the exact dollar amount.

And Senator Durenberger or his Volunteer Committee at the time that we first started talking about it would lease the unit at a per diem, per day charge which would be equal to the per day costs associated with the ownership of the unit.

I think that answers the question.

Q You say that you think that an agreement was reached along the terms that you described. Was that a written agreement at that time or an oral agreement?

A That was an oral agreement.

Q And how soon thereafter was it reduced to writing?

A I don't know.

Q How soon after -- you spoke directly with Mr. Overgaard, as I understand; is that correct?

A Yes.

Q And among the things that he indicated that he needed as part of this deal, among his goals was a lease with the Senator or the Volunteer Committee, if I understand it.

A He didn't focus on a lease. I used the term "lease.' The basic business proposition was a purchase and a coverage by somebody else of the cash flow. It was reduced to its ultimate essence. It was Paul buying at a fair price, staying there when he wanted to stay there, and an arrangement which covered the basic elements when the Senator would stay there.

Q So the cash flow basically was to be covered through payments to Mr. Overgaard by a lease or an informal lease agreement, through one or the other arrangements?

A His basic cash flow was to be covered except when he was staying there. He wanted a basic, elemental deal.

Q How much time elapsed between your conversation with Mr. Overgaard and your follow-up conversation with the Senator?

A Not much. I cannot say it's a day. A short period of time.

Q Within a few weeks, presumably?

A Oh, I would think so.

Q And what did you do after the conversation with the Senator?

A What did I do?

Q Did the Senator direct you to draft agreements reflecting the agreement with Mr. Overgaard, for instance?

A I think so. My understanding after the conversations with Overgaard and the Senator was that they had -- all of us, the three of us, had reached agreement that there was to be a sale along the lines that I described, a sale to Mr. Overgaard at a price that was about $53-55,000.

Q You are not certain of the price, but at the time there was a price agreed upon; is that right?

A It basically -- well, I think so. I think so.

Q It may have changed subsequently, but at the time of these conversations, the parties had agreed to a particular purchase price?

A Yes, I think so. And so the -- my sense of walking away from it was there was a basic elemental deal.

Q And you were tasked to reduce that deal to writing?

A Well, I don't recall whether anybody said, "Okay, now write this down," precisely, but the operating assumption that I had was that this was a very simple, elemental arrangement and that it would be effected by the simplest, most elemental pieces of paper. It would not be a complicated or heavily negotiated or certainly heavily lawyered transaction.

Q But it did have to be reduced to writing; right?

A Yes.

Q And you did ultimately attempt to reduce the agreement to writing?

A Yes.

Q I assume you did so at the Senator's direction?

A Yes, I assume so.

Q We as lawyers don't typically undertake to do work that the client hasn't authorized or won't agree to pay for; isn't that right?

A Yes, ma'am.

Q Would it also be fair to assume that you undertook to reduce the agreement to writing perhaps only to a first draft, again not long after your conversations with Mr. Overgaard and the Senator?

A I just do not remember what happened. I have a sense of sort of relaxing about the whole thing; that is, being able to stay in that unit, was as close as we could come to a reasonable interpretation of the rules which would allow him to stay there.

Q Did you ever discuss with the Senator the possibility that he reserve the right to purchase the condominium back from whatever party purchased it from the Senator?

A I don't remember any conversation like that.

Q Did you discuss that concept with Mr. Overgaard?

A I don't remember any conversation with him about that.

Q Were you ever aware that there was an agreement between Mr. Overgaard and the Senator that the Senator would be able to purchase the property back from Mr. Overgaard?

A An agreement, no.

Q How about discussions between the two principals to that effect?

A No. I don't have any recollection of any conversations with them, and I cannot speak to whether or not they did. But I don't have any knowledge of that.

Q Did you advise the Senator that he could not claim reimbursement for the expenses of staying in a unit or by the Volunteer Committee, but that could have occurred. I know that we had a discussion about a lease. And that, I believe, occurred, again, in September or October.

Q Of?

A '86.

Q Why do you place that conversation at that time? How do you place it in September-October 1986?

A I place it relative to events. I believe the events which occurred were Scherer wanted to leave, an examination of what the per diem rules might be, our understanding of them, a conclusion that wasn't clear, that somebody had to make a decision to do something. The decision was made quickly. And it would follow from the memorandums that we have delivered that that decision would be made fairly quickly after that. And a sense of mine that the conversations I had with Overgaard were in the last part of '86.

Q What is that sense from? Also from the documents and events that you describe?

A It is independent of those. I don't have a specific event, like a meeting in a restaurant or something to put the frame. But my belief is the conversations occurred, basic deal was struck in the last part of '86.

Q On what do you base that belief?

A I don't know. It is just something that I am carrying around in my head.

Q Have you discussed the timing of those conversations with Mr. Overgaard recently, i.e., within the last seven or eight months, with Mr. Overgaard?

A Yes.

Q Have you discussed the timing of those conversations with any other persons other than your counsel within the last seven or eight months?

A No.

Q You haven't discussed them with the Senator?

A Correct; I have not.

Q How about with the Senator's counsel, Mr. Hamilton, Mr. Popham, people on their staffs?

A I had conversations with Mr. Popham and conversations with Mr. Hamilton. And I don't remember, I may have asked the question, but I don't remember specifically if I did, and I don't remember any specific answer.

I remember them more asking me questions than I do me asking them questions.

Q During your conversation with Mr. Overgaard in which you discussed this issue with him in the last seven or eight months, do you recall specific questions and specific answers?

A No.

Q Did you ask Mr. Overgaard when you and he had conversations about the sale of the unit?

A I think so.

Q Do you recall his answer?

A Not a specific answer. I recall a sense of what he said. I came away from a discussion in which I heard him to say to me there was a basic core deal that was arrived at early, and I don't know what early means. And it didn't get memorialized until later. But the basic elements of the transaction were there. And that is what I took him to be saying.

Q Was there anyone else present during that conversation?

A Yes.

Q Who?

A One of my lawyers.

Volunteer Committee was not the appropriate party to be obligated on a lease agreement?

A Yes.

Q Why was that decision made?

A I don't remember.

Q Did you participate in that decision?

A I think so. I think so. But I think it may have been just as simple as, "No, we don't want to do that."

Q And you don't recall any conversation about why it was decided not to do that, as you say?

A No, I don't. I don't.

Q In connection with our examination of an earlier exhibit, you identified a gentleman in your accounting, an accountant with your firm or an accounting clerk with your firm, whose first name was Jack. What was his last name?

A Habeck. I believe it is Habeck.

Q Mr. Mahoney, as you look at these documents, they each reflect the name of the Durenberger share partnership as a party to the agreement as it is reflected in these documents.

A Yes.

Q Why is it that the partnership is identified as the party rather than the blind trust or you as trustee for the blind trust at this time?

A I think it is because I failed to focus on who owned what, and I think it was that there was a general sense of there was a buyer and there was to be a seller, but I don't think that I paid particular attention to who was selling. I mean there was a seller, whoever owned the unit was to be selling. And it is kind of embarrassing and stupid, but I just don't think I paid attention to it, and I don't think this is a model of how to do a transaction.

MS. WETZEL: Off the record for a second.

(Discussion off the record.)

MS. WETZEL: Let's break for lunch.

(Whereupon, at 1:41 p.m., the taking of the deposition was recessed, to reconvene at 3:00 p.m., this same day.)

reference and that there's a type of transaction in our area of the country known as a contract for deed. And this is the reference that we used often in discussing it. And the reference refers to a form of transaction in which the buyer agrees to buy and at the conclusion of the terms of payment, the seller delivers the actual title or conveyance, the deeds. And so at various times throughout this, Paul asked about a deed. I said, Paul, we have the capacity to deliver it to you, but I recommend you don't file it and because I was nervous about the due on sale provision and I was nervous for my client about the loss of his title interest until the mortgage had actually been assumed or otherwise paid. So I encouraged him not to file it. So in response to this, I suspect what I said was, Paul, there's nothing to be filed, there's nothing to be recorded until final payment is made or the mortgage is assumed.

Q Let me see if I understand. This transaction with Mr. Overgaard, it was your understanding it was what you call a contract for deed transaction? Is that right?

A Yes, we talked in those terms. It's --

Q Meaning that when the final payments were made to the Senator under the terms of the letter agreement, it was your understanding that the Senator and\or the partnership or you, as trustee, would be obligated to provide to Mr. Overgaard, an executed deed, either a warranty or a quit claim deed? Is that correct?

A Yes.

Q But that until that final payment was made, there was no obligation to provide that deed?

A At least until we were certain that the mortgage was not at risk, that it was a conditional sale.

Q Conditioned upon what?

A Conditioned upon assumption of the mortgage which, by its terms, was not assumable without the consent of the bank, or payment of the mortgage.

Q Did you take any steps to assure that Mr. Overgaard met with bank officials to see whether that mortgage could be assumed?

A No, I didn't take any steps.

Q And Mr. Overgaard was not required to pay off the Senator's mortgage as part of this transaction, was he?

A In order to secure title, yes. The transaction was a conditional sale. Paul agreeing to pay the bank or assume the mortgage, and thereby removing the Senator from any obligation under the mortgage, make the cash payment and pay under the terms of the note. Those conditions having been met, --

Q Then each of those conditions had to be met before there was any obligation on the part of the seller to deliver an executed deed, is that your understanding?

A Yes.

Q So that there was no obligation to deliver the deed until after the note to the Senator had been paid in full, is that right?

A Well, I think that goes a little beyond what these parties intended. That is, the note probably could have been outstanding and the deed delivered, because it was not as significant as the other items. So I think there was a $10,000 balance due and had we gotten to the point where there was either substantial performance or assumption, I suspect that the deed could have been delivered.

Q Did you discuss the contingent nature of the purchase agreement with the Senator? Did he understand the nature of the agreement that you've just described as you've just described it?

A I think so.

Q You understood that he did, based on your various dealings with him, I take it? Would that be a fair statement?

A I think so.

Q Let me ask you to look at Exhibit 49, which is a slightly different version of Exhibit 45. This contained a new front page. Have you seen this before?

A I may have.

Q Can you just identify it for the record?

A It's a memorandum to the Senator and myself from Heidi dated November 13, '87, regarding days that the Senator stayed at the condo.

Q Why was this information provided to you, do you know?

A No, I don't know.

Q What did you do with this information once you received it?

A I don't know.

Q Did you provide it to Paul Overgaard or to somebody at his company?

A I don't know.

Q Did you direct somebody else to do so?

A I don't remember doing anything with it.

Q Mr. Mahoney, under the terms of the agreement, who was obligated to pay taxes on the property and association fees on the property until the contingencies had been satisfied?

A I would say that Paul was, the buyer was.

Q Even though he was not entitled to receive an executed deed to the property until the contingencies you've identified had been fulfilled?

A Yes. The substance of the transaction is that from the date of the agreement and the day of acting under the agreement, forward, the buyer is for all purposes to be treated as the owner. And the only reason for not delivering the deed is that, with the deed, Paul could record it and there would be a risk that the mortgage still would remain in the Senator's name. But once those risks are substantially removed, either by payment or assumption, then we're free to deliver the deed because the risk is gone. But for all other purposes, the operating assumption, I believe, is that the buyer was responsible.

Q Mr. Overgaard would not have been able to convey the property, himself, would he, until he had received and

A I don't remember doing anything with it.

Q Mr. Mahoney, under the terms of the agreement, who was obligated to pay taxes on the property and association fees on the property until the contingencies had been satisfied?

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Q Mr. Overgaard would not have been able to convey the property, himself, would he, until he had received and

A I think it was just set. I don't think it was related to anything other than discussions occurred before it, and that was the date that it would be effective.

Q Well, were you provided that date by somebody, or did you arrive at it yourself?

A If you mean how, I believe it was set by three people; Paul, the Senator and myself.

Q Why was the date then changed to April 1, '87?

A Between January and April, something took place which basically changed one of the elements of the transaction, and I only remember it as having affected the price, but I don't remember exactly what it was. I only remember that something happened. That the basic elements of the transaction did not change. The purchase price was to be the same, the rent was to be the same, but something happened that required them to move it from January to April. And an explanation, although I don't know if it's the explanation, is the payment of the per diem between January and April somehow that might affect the price, although I can't tell you why.

Q Payment of per diem meaning payment by the Senator to the partnership, the per diem reimbursements? Is that what you're referring to?

A That's what I'd be referring to. I don't know what happened, but I do have the sense that something changed that required a change from January to April, but it was simply a movement of the date. The parties were the same.

Q Let me ask you to look at Exhibit 52 in that regard. This is a letter to Mr. Kelley from Mr. Overgaard dated November 5, 1987, and shows a carbon copy to you. Is that right?

A Yes, it does.

Q The second to last paragraph there, it says "the sale was to be done effective January 1st, and now I find out payments were made to the partnership at least through March."

Now, at the time you received this, did you understand to be a reference to per diem reimbursement payments?

A I don't know.

Q Do you recall receiving this letter in November 1987?

A Yes. I presume it was in November. I don't know

UNITED STATES SENATE
Select Committee on Ethics
Washington, D. C.

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In the Matter of: :
:
Preliminary Inquiry concerning :
Senator David Durenberger :
:
- - - - - - - - - - - - - - - - - - X

Suite 220
Hart Senate Office Building
Washington, D.C.

Friday,
May 5, 1989

Personal Interview/Deposition of:

JODI MATHISON

a witness, called for examination by counsel for the Committee, pursuant to notice, commencing at 3:13 p.m., before William J. Moffitt, a court reporter, when were present on behalf of the respective parties:

APPEARANCES:

On Behalf of the Committee:

WILSON ABNEY, Esquire
Staff Director and Chief Counsel

VICTOR BAIRD, Esquire
Counsel

HOUSTON FULLER
Office of Special Investigations
General Accounting Office

Ex. [illegible]

Q No, we don't need your address.

A My name is Jodi Mathison. I'm employed by Senator Dave Durenberger as his personal secretary and scheduler.

Q Okay.

Can you recount for us the history of your employment with Senator Durenberger?

A I started in his office in June of '84 as a receptionist, and I then went, in January of '85, to the Subcommittee on Intergovernmental Relations to be Chief Clerk, and in September of '85 came back to his personal staff to be his secretary.

Q And what were your duties when you first joined his personal staff in June of '84?

A I was a receptionist. I answered the phones. I greeted constituents. I took care of the White House and other tour requests. I did a lot of other things, you know, along with that. Those were the main things.

Q And your responsibilities when you moved to the Subcommittee?

A I was the Chief Clerk, and I handled the accounting and the -- setting up the procedural -- doing the procedural aspects of hearings.

Q Okay.

And when you returned to the Senator's staff in '85 what were your responsibilities and your job then?

A I was his scheduler, and I handled the Washington and national scheduling. I did not handle his travel arrangements to begin with. I didn't handle that until the summer of '86 I guess is when I started to do that. I was his personal secretary, and handled his correspondence and his files, and typed his dictation, and, you know, administered his schedule on a daily basis, that sort of thing.

Q Who handled the travel up until the time you took it over?

A That was Jim Roane.

Q As his personal secretary, would you recieve at your desk letters that came in requesting the Senator's appearance or requesting that he make a speech, letters of that nature? Would those come to your desk? And if so, at what process would they come to your desk?

A Well everything is sorted in the mail room. And so I'd go pick up the mail and, you know, all those things are put in my box; whatever sort of requests would come in by mail, speeches and receptions, that sort of thing.

Q So the requests for speeches, receptions and appearances and so forth, would those be sorted out in the mail room?

A No. They're just -- everything is just sort of put in my box and I sort it out.

needed a response.

Q Uh huh.

A And that happened on occasion, but most of the time we did it in a scheduling meeting.

Q In the normal circumstance, whether it took place outside in a meeting that you had with the Senator, or was handled at the scheduling meeting. The Senator would make the final judgment on whether or not a speech request was to be accepted.

A Most of the time, unless for some reason if he wasn't available, and a speech came at the last minute, Doug might make that decision.

Q Uh huh.

A But generally it was the Senator who made the decision.

Q Okay.

As you took the job in late '85, was there -- there did come a time when you became aware that the Senator had several different categories of appearances that he was making, did there not?

A At some point after I took the job, I believe it was Doug who explained the agreements, the Piranha Press agreements. And I don't recall exactly when that occurred, although it must have occurred I would think within the first couple of weeks after I had been there.

Q And what did Doug tell you about that arrangement?

A Just that there was an arrangement, and that the money went to the publisher rather than to the Senator. And that I believe he told me that Washington speeches, there was a $2,000.00 fee, and national speeches there was a $5,000.00 fee.

And I can't remember if he told me how to handle it or not. I know I had a conversation later on with Mike Mahoney because I wasn't comfortable with my understanding of what I was supposed to do. And I didn't want to do the wrong thing, and I didn't want to offend anybody on the phone. So Mike had at that point just explained to me, you know, this is the agreements, and you should explain to the people -- or when you're talking to them just say the Senator has an agreement with his publisher for the promotion of his book, and the money will go to the publisher rather to himself, and that the speech would be confirmed when you've spoken to Mike Mahoney. And then I would refer the information back to Mike and he would call them or somehow be in contact with them.

Q How did you know to contact when you weren't sure exactly what your role was to be in handling the Piranha Press appearances? How did you know to contact Michael Mahoney?

A Well I knew --

Q Who is Michael Mahoney?

A He's an attorney in Minneapolis and the Senator's attorney who handles a number of things for him. And I guess Doug must have told me that Mike was the contact or the person that I was supposed to forward the information to. So I don't recall, you know, how I ended up having that conversation with him, other than we were on the phone one day, and we were talking about it. I don't know exactly.

Q You were on the phone with Mike and talking about it?

A Uh huh.

Q And can you give us a time frame on this conversation from the time you came to work in '85?

A Maybe October. It wasn't right away. I had been there a little bit of time. And just didn't feel comfortable with what I was doing I guess.

Q Didn't feel comfortable in what sense?

A Well just trying to deal with all his paperwork, and make sure that I got the information to him, and make sure -- because we were so far behind in trying to get back to a lot of these people. It was like a month before the event for some of them. And it was -- you know, I wanted -- some of them were not happy about that. So when I was talking to them I wanted to make sure that I was saying the right thing to them. And, you know, sometimes you just don't sort of thing.

Q So you'd have the conversation with him, and that would be considered and agreed upon, honorarium appearance, for whatever point and whatever amount you had discussed with those people you'd contact?

A Uh huh.

Q And now let's assume that the Senator decided that a particular request was going to be a Piranha Press appearance.

A Uh huh.

Q And had indicated that on the letter or had told you that verbally.

A Uh huh.

Q How was that handled?

A Basically the same way. I would call the contact person back, and tell them that the Senator was interested or wanted to speak to their group. And then I would say that he had an agreement with his publisher for the promotion of his books, and the money goes to the publisher rather to himself. And tell them that the speech would be confirmed when they spoke with Michael Mahoney would be contacting them, who was a representative. He will be contacting them. And then I would reconfirm all the details, and then put it in the book, you know, file it, and then make a copy of -- I think I sent all the information that was almost -- well, depending on how much information there was from a particular organization. Would telecopy it to Mike, Mike's office in Minneapolis.

Q And how frequently would that be done, telecopying? Of a scheduling meeting, about once a week. Right?

A Usually I will -- I sort of separate all the stuff out into the groups, you know, whether it's reception meetings or speeches, and would do all the speeches at one time, and then take it all, copy it, and then at one time take it down to the telecopier and send it. Or as many as I could do at that time. If I could in touch with these people and to send it all in one bunch.

Q Okay.

Telecopier, is that different than a fax?

A It's the same thing.

Q Okay.

I've never used either one, so I didn't know.

The details that you would confirm with the potential sponsor of a Piranha Press appearance would be as to what terms? Time and place?

A Everything that -- well I mentioned that would be on that cover sheet that I would want them to know. The time and the place, the date. Most of the time, but not always, speeches sort of are around the meal, you know. And then it's like what's the program, you know, when's lunch, when's the speech, when's, you know, all that's going on? The number of attendees, what they wanted him to speak about, the description of the audience. I would try to remember to ask them to send an agenda and a list of attendees if that was possible, if it wasn't, you know, too large of a group. And then I would confirm the amount of -- the amount of the honorarium or stipend or whatever. I guess stipend would be the appropriate term.

Q Okay.

How would you confirm that?

A I would -- well it depends -- most of the time it would be indicated in the letter or I would have already spoken to them. So I knew the amount. And then I would just say you'd indicated it would be a $2,000.00 honorarium. And then I would go into my, the Senator has an agreement with his publisher. And then at that point I would send the information to Mike Mahoney, you know, with all the other requests.

Q Uh huh.

Would there be an agreement at that point as to the -- a confirmed amount to be paid for the appearance after your discussion with him here at that point?

A Usually -- well I shouldn't say "usually." A lot of times the amount is $2,000.00.

Q Right.

you tell them that?

A Well I'd give my little speel, and then I'd say that this speech will be confirmed when they spoke with Mike Mahoney, who was the Senator's representative in Minneapolis, regarding his promotional contract. And then Mike would call them. I think he called them. And would have a discussion as to the, you know, whatever the details were regarding the promotion.

Q Details regarding the promotion.

A Or the speech. Or, you know, whatever it is that he said to them. I don't know.

Q Okay.

It was the details of time, place and normally the amount to be paid were already confirmed by you with the sponsor prior to your sending it up to Mike Mahoney. Is that right?

A I would say most of the time. I would not all the time.

Q All right.

A There were times when maybe we didn't -- the group may not have felt comfortable with what I was saying to them. And they would be in touch with Mike and they'd have whatever conversation they had. And somebody would let me know if this was going to work or not.

Q Okay.

say or that's the way it was.

Q Okay.

So if it was a planned speech accepted -- the Senator wanted to accept it, it was going to be outside the Washington metropolitan area, you would tell those people that the fee was going to be -- would you tell them that the fee was going to be $5,000.00?

A I never -- let's say if we had a speech request from an organization, you know, somewhere out of California or something, and they had sent in a letter that indicated there would be a $2,000.00 honorarium, if the Senator really wanted to do it, I did not call them back and say he wants to do this, but the fee is $5,000.00. I believe it would have been forwarded to Mike. I don't recall. But I didn't -- I didn't have those discussions, that sort of a discussion with anyone.

Q Okay.

Once you forwarded the letter--request letter or cover memo, I guess--off to Michael Mahoney, what would happen on your end next?

A Eventually I would receive a letter from Mike's office on Piranha Press letterhead, and it was a copy of a letter that was to the group that he was speaking to, that just, you know, talked about the promotional appearance. I think it was a two-page letter, not completely on the second page, and there was another sheet attached that just listed I think the date, and the name of the group and the amount of the speaking fee. And that was it, unless there was a problem, unless someone called and said this speech isn't going to happen. That was really all the --

Q No further action required on your end?

A Uh huh.

Q When checks come into the office following speeches, how are those handled?

A Usually they're given -- they're put in my mailbox, and then they -- you know, I have all these different type of checks on my desk. There are oftentimes people will send campaign contributions into the office. So somehow all these things have to be separated. And the campaign checks are forwarded to the campaign committee, but I would have the other checks, and I would have to refer to the list that I had to make sure that the checks, you know, if it was supposed to be an honorarium speech, that that check went to the appropriate place. And then if it was a speech that had arrived from Piranah Press from a book promotion speech, that that was forwarded to the appropriate place.

Q Okay.

As you were receiving checks during '85 and '86 while the Piranha Press agreement was in effect, were there ever times when checks would come in made out to the Senator there being an agreement that the Senator would appear on a certain -- on a certain date at a certain time, and there would be a $5,000.00 payment made for that, would I be accurate?

A We discussed this -- I would presume at this point I was discussing with them that the Senator was interested in doing it and that is the information. That's when it occurred, the time of day it occurred. I had given him the information about the book promotion, and then told them that he would need to speak to Mike Mahoney to confirm the Senator's participation in the event.

Q If I were to talk to Mr. Windburn, would he tell me that, do you think, that he had an agreement after his conversation with you or that he did not have an agreement as of that time?

A I don't -- I don't know what he had, you know. I tried to explain to people the best that I could because I was not the one that was negotiating this. I had to refer all of these people to Mike Mahoney. And I don't know what they thought. There were a lot of people that, since, -- you know, I don't know how many people or how many times that they would ever have to deal with something like this with another office, but I think they were a little confused.

Q Yeah.

I thought you had -- maybe I misunderstood earlier --

I thought you had told me that most of the time there was already an agreement as to the amount that was to be paid before it was forwarded up to Michael Mahoney, that you and the person had agreed on an amount prior to your transferring it up there for handling.

A Well we didn't really. I mean I am basically the gatherer of information, and then I send the information to somebody else to deal with.

Q Uh huh.

A We had gone through these, whatever the little sheet. You know, we had gotten all the information that we needed. There wasn't really -- I would just tell them that the Senator was interested in doing the speech, and we'd get all the information, and that he had an agreement with his publisher and all of that. And then I would say that they do need to speak with Mike Mahoney to confirm the event. I don't know if you consider that an agreement or not. I mean --

A Okay.

Let's look at page 5. I notice--and this is true many times throughout the documents--that you will make notes in different pens at different times. Is there a pattern for that or was that purely random or do you have a system?

A Well --

Q Your files are so organized leads me to believe you

Q That "2,000 (PP)"?

A Uh huh.

Q The notation -- there's that notation. The Senator, and as the process would have worked, the letter would have gone in and the Senator would have approved it?

A This particular one went to him without necessarily having all the information that he likes to have when making a decision.

Q And what was missing?

A Well obviously because of his notation that there's no indication if there's an honorarium involved.

Q Okay.

And so how -- so the Senator made a note on it, "$2,000 (PP)."

A Uh huh.

Q And then would you have followed up to make the contact that you noted there? Is that the sequence that we would have gone through? "Contact Dick Bolget. 2K is O.K."

A Yes. I would have contacted him and told him that the Senator was doing the event, and, you know, gone through, you know, all the rest of the information and asked about the honorarium, and told him then again about the agreement. And he must have said "That will be fine." And then I told him that -- well, you know, finish that. And that he would have to speak to Mike Mahoney. And this is the date that I was speaking to him on and then that was the date that I sent it to Mike Mahoney.

Q Okay.

The agreed to is the day you would have talked with Dick Bolger you think?

A I believe so.

Q And then telecopied it up to Mike Mahoney following that.

A Uh huh.

Q Okay.

BY MR. ABNEY:

Q Why was it that he would have to speak to Mike Mahoney?

A Dick Bolger? Because Mike was the one that actually confirmed the event. Even though I was talking to the people because I had the scheduling book and I'd be writing all the information down in the book after -- after or at the same time that I was talking to this person. And then I would indicate to them that Mike Mahoney was the Senator's representative in Minneapolis for the book promotion, and that he would have to -- he would be contacting him and when he did so -- regarding the speech, and when he did so, or when he spoke to Mike, then the speech would be confirmed, because Mike would -- I don't know what he's to say to them. I assume go through the details on the letter that was sent, or whatever other details there were for the agreement.

BY MR. BAIRD: (Resuming)

Q Let's go on to page 9. This is an invitation or it appears to be a letter inviting the Senator to speak to the National Association of Container Distributors convention. Correct?

A Uh huh.

Q Dated February 12, 1986.

Your handwritten notes say "2K"--$2,000.00 honorarium if I'm interpreting that properly--"O.K."

A Uh huh.

Q And you've written that in two places, and then saying "Agreed to on the 4th of March, '86, and telecopied up on March the 5th."

A Uh huh.

Q Are you not confirming an agreement that the price to be paid for the Senator's appearance will be $2,000.00?

A Well in this particular letter there's not a lot of information here as far as the event. I mean it's -- I don't know if there's anything else that went with this or not. But --

Q And they give you a date and the convention.

A But, you know, as I mentioned, he likes to know how many people are going to be in it, there's an honorarium, responsible, you know, to send it to Mike Mahoney for him to confirm the event. And I was told that the fee -- what the fees were. And again, I can't tell from those things if there were letters that went along or if it was a telephone call, so I don't know how to interpret my notes against what the conversation could have been.

Q Uh huh.

A But I didn't negotiate speeches. I just passed, you know, made -- tried to clarify, speak to him myself between that person, between I guess our office and Mike Mahoney's office, make it as, you know, easily understandable to everybody as possible, which is why I make the notes that I do on all these pieces of paper.

Q Okay.

So Mr. Mahoney or Doug, one or the other, Doug had told you that the fees were 2 and 5.

A Uh huh.

Q And you're not sure whether it was Doug or Mr. Mahoney. One of them told you that that was a piece of information you were -- when you called back to confirm with people that you were to tell them what the fees were?

A That's when I was calling back to tell them that the Senator was interested in giving the speech or participating in the event. As we went through the information, that I was to indicate to them that he had an agreement with his publisher for the promotion of his books, and that, you know, if it was a Washington speech I'd say the fee is $2,000.00, and whether or not that had been indicated that that was the price, or whatever -- that was the fee, or if there was no indication, and that it would be sent to -- that the speech would be confirmed when they were contacted by Mike Mahoney, who is the Senator's representative in Minnesota.

Q So the appropriate way to interpret your notes is --correct me if I misstate--that you would tell them how much the fee was --

A Uh huh.

Q -- according to what had been told you.

A Uh huh.

Q They would then tell you whether or not that was an acceptable fee.

A Uh huh.

Q And your note would then pass that information on to Michael Mahoney.

A Uh huh.

Q Were any of the --

MR. BAIRD: Could you pick up the "uh huh" on all those?

THE REPORTER: Yes, sir.

THE WITNESS: I'm sorry.

TRANSCRIPT OF PROCEEDINGS

UNITED STATES SENATE

SELECT COMMITTEE ON ETHICS

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IN THE MATTER OF:                         :
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PRELIMINARY INQUIRY CONCERNING            :
SENATOR DAVID DURENBERGER                 :
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DEPOSITION OF PAUL OVERGAARD

CONFIDENTIAL

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Washington, D. C.

Thursday, April 12, 1990

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UNITED STATES SENATE

SELECT COMMITTEE ON ETHICS

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IN THE MATTER OF :

PRELIMINARY INQUIRY CONCERNING :
SENATOR DAVID DURENBERGER :

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DEPOSITION OF PAUL OVERGAARD

Washington, D. C.

Thursday, April 12, 1990

Deposition of PAUL OVERGAARD, called for examination by the Special Outside Counsel pursuant to subpoena, at the law offices of Dunnells, Duvall, Bennett and Porter, 2100 Pennsylvania Avenue, N.W., Suite 3B, at 2:07 p.m. before BARBARA L. WHITLOCK, a Notary Public within and for the District of Columbia, when were present:

ROBERT S. BENNETT, ESQ.
Special Outside Counsel
FRANCES L. WETZEL, ESQ.
ABIGAIL JOHNSON, ESQ.
Dunnells, Duvall, Bennett
& Porter
2100 Pennsylvania Avenue, N.W.
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On behalf of United States Senate
Select Committee on Ethics.

WILSON R. ABNEY, ESQ.
Staff Director/Chief Counsel
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Senate Select Committee
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Washington, D. C. 20510
On behalf of the Committee.

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and c. And given him an opportunity, obviously, to respond. So that is pretty much where we are.

I would estimate that this deposition, depending on the nature of your responses, will probably go maybe two hours, two and a half hours, and I will certainly try to keep it to that. If at any time, you want to leave, or take a break, please let me know. If you don't understand any questions, please ask me, and I will clarify them. And if anything I ask in any way implies to you that maybe you don't think it is a fair question, don't hesitate, because my determination has to be as fair as possible, as I can be.

We have prepared some exhibits, and obviously these events go back a long time, so I would like to show you. And we'll be using these throughout the proceeding.

BY MR. BENNETT:

Q And I guess my first question to you would be, would you be kind enough to turn to Exhibit 2, and tell me if you can identify Exhibit 2, and take as much time as you need to review it.

A It is not hard to identify that. It is obviously a letter that I wrote to Senator Durenberger.

Q What was your purpose in writing this letter to

Senator Durenberger?

A Well, I guess if you knew me, you would probably recognize that it was an attempt to convey to him my total frustration with the fact that I was not getting the legal documents that I expected to get in the condo sale.

Q Before we get into specific parts of the letter, can you tell us when it was you first heard of the condo, the condo that we're talking about?

A Well, I can't tell you when I first heard about it because it certainly was not one of the highlights of my life that I would remember the date, but to the best of my recollection, it would have been some time in 1986 because that was, to my recollection, with the passage of the tax act, the partnership arrangement that he had with Roger Scherer was going to be unwound because Scherer wanted to do something with his own unit. So I presume it was in 1986.

Q Who would have brought it to your attention? How would you have gotten involved in this, since Scherer was involved earlier, and now you apparently appear on the scene. How did that come about?

A Well, I was a part of a group of people that met periodically with Dave. I've known him for 30 years. I would presume it came up in the course of some discussion in which the need to do something was coming up because I think that Scherer had indicated that he wanted to do something to get out of the arrangement.

Q Why was there a need for something to be done for what purpose, I guess, is my question?

A Well, the partnership was going to be unwound and the condo was a part of the partnership.

Q Was this group you're talking about, what this condo situation a subject of discussion in that group?

A Well, Mr. Bennett, in the course of the last several years, this group of ours got together periodically to meet, to talk about campaign issues, the normal support issues, how's it going kind of thing, and it would have been, I guess, very understandable that those people, that we would have talked about that.

Q Who was in this group?

A I don't, you know, I don't recall, specifically. I think Gene Haldorness was -- I don't even remember who the staff people were but I presume Gene Haldorness was quite involved as a friend of Dave's. Tom Horner was I think at that time his staff person, and I don't remember whether

Kitty Gamble was his manager in Minnesota at that time, or not, but --.

Q Well, was this group, a group of people that saw themselves as being political and financial advisors to Senator Durenberger? Was that the common thread of the group?

A Well, I guess I'd probably describe it more as apolitical advisors, friends, probably all of us people that had been associated with him for a number of years in one capacity or another.

Q Now, did you go into this condo arrangement for your own personal financial interests, or did you do it for the purpose of assisting Senator Durenberger in some way?

A I've had an office in Minneapolis for a number of years. I don't have a high profile there, but I've kept an office there with Ken Anderson, an attorney, for, oh, gosh, probably back to '83. And I have, on two different occasions, rented apartments or condominiums there because my business activity took me to Minneapolis often enough that it was desirable, if not financially the best decision, to have a place other than a hotel. I just despised hotel stays and so I rented it. I was not renting it at the time this situation arose, but when I heard that they were going to unwind the thing, I said I would be interested in buying it because I had an interest in having a place that I could use when I was in Minneapolis, and it made sense if the Senator could make use of it and rent it, but it was economically a viable alternative.

Q Are you testifying that even if Senator Durenberger had no interest in making use of the condo, you probably would have gone forward with it, anyway?

A No. I probably would not have because I don't know anybody that would rent the place Thursday through Monday, and let me stay there Tuesday, Wednesday and Thursday.

Q Did you have discussions with Senator Durenberger or anyone else on his staff that, if he made use of the condo, there would be reimbursement from the Senate disbursing office? Was that understood by you that that was part of the deal?

A Sure. I understood that he could be reimbursed for staying there, it seemed to me, one place or another.

Q What period of time are we talking about, now, when you decided that you might like to have a place that served your own purposes?

A I think that discussion probably occurred during the later part of 1986.

Q Do you remember who that was with?

A No, I don't.

Q Would it have been the Senator?

A Well, certainly there would have been at least one occasion where he and I would have discussed it.

Q Look at Exhibit 2, if you would, at the bottom of the first page and the top of the second page. And let me just read it for the record, because I want to ask you about it.

It says, "the last thing I need is to get involved in your ethics investigation and be accused of participating in a sham transaction by which you collect per diem from the Senate on a residence you actually own. That is certainly a conclusion that could be reached, as things stand now."

That's pretty strong language, Mr. Overgaard. And I guess what I'd like to ask you is, is that an accurate statement or were you writing something in a letter which you knew was not an accurate statement?

A Well, I guess I don't understand what you're saying. I was not writing something which I guess I perceived as either an accurate or inaccurate statement. I was writing something that I hoped was going to get his attention.

Q Well, let me be absolutely candid with you. I mean, I think you would agree, this is pretty strong language here. And in fairness to you, am I correct in saying that you would not threaten Senator Durenberger with something which was not true? In other words, I want these papers executed, and if you don't execute them, here's what my position is. This a sham transaction.

I mean, you weren't doing that?

A I guess I don't get that out of that. I don't see that that says, if you don't execute them, I'm going to do something to you. What I see in it is a statement that says, if you don't execute it, it could be perceived that.

Q Why did you feel that way?

A Because it was approaching --

Q The date is September 8, '89. What was it that concerned you that caused you to write that statement?

A I hadn't gotten the final papers on the condo.

Hadn't gotten the completed transaction papers from Mahoney. And my attempts to get them from Mahoney were completely fruitless.

Q Would you look at Exhibit 3? Have you read the letter? Do you consider this a true and accurate letter? Is there anything in this letter which is inaccurate which you looking at now would say, well, I really shouldn't have said that because it wasn't true?

A Well, pretty obviously, if I thought the letter was going to be the subject of this kind of discussion, I would have framed it in different terms. But, understand, that I've know this guy for 30 years, and I was at a point of considerable frustration at not getting that paper work, and I thought he could do something about that.

Q You certainly, when you wrote this letter to Senator Durenberger, you were writing a friend of 30 years and certainly had no expectation that this would become a matter of public record, or that someone you'd never met before would be asking you about it.

Right? I mean, this was between you and him?

A That's right.

Q I mean, you didn't even copy anyone other than same price.

Q At the time that you wrote that note, was that true?

A At the time I wrote that note, Mr. Bennett, if I could have backed out of that deal and gone my way, I would have. I was sick and tired of all the hassle that was going into trying to get the deal done. I don't remember when that note was written. Obviously, I wrote it, but --

Q I take it, you're not going to go into any more condo deals in the future?

A You have to understand that I'm not given to being subtle.

Q No, I think we're going to get along fine. And you're not getting into any more condo deals, are you?

A You better believe it.

Q Okay, let's look at Exhibit 4. Let's talk straight with each other for the next hour and a half, and we'll get out of here.

Do you know whose handwriting that is?

A No, I don't.

Q It looks like the bottom of Exhibit 4, there is a reference to "agreed to reconvey," right in it. Do you see that, the last entry on that note, "agreed to reconvey"?

Do you know what that's all about?

A Where?

Q At least, that's how we read it. Do you know what that refers to? Or put another way, did you have an agreement with him that you would reconvey it?

A No, I did not have an agreement that I would reconvey it. I don't know what that refers to, but I did not.

Q Let's look at Exhibit 5. You recognize this, I take it, as Senator Durenberger's writing, right? And that's says "Paul O." it's obviously a note to you. Do you see that?

A Yes. "You agree to hold the deed."

Q Yes.

A Yes.

Q Why, if this was just a normal real estate transaction which you entered into largely for your own interest, although you acknowledge it was fine if it helped him, too, why would you agree to hold the deed and not file it?

A Well, my understanding of our purchase agreement was that I was buying it on a contract for deed. I've bought property before on contract for deed which is just that. I got a contract that says, when I pay the contract, I get the deed, and that's what I expected we were doing with this. I did not have a lawyer on the thing, and it didn't really make a whole lot of difference to me whether I had the deed or not. I presumed that the important thing was, I had the bank's agreement to the assumption of the mortgage, I was making the payments. My recall is that it was Mahoney's idea that it wasn't really important to file the deed, and I said, that's fine with me. I'm not -- it wasn't a big deal with me.

Q At the time that you were discussing getting into this condo thing, what was your understanding of what the per diem reimbursement arrangement was that the Senator had?

A I don't understand what you're asking.

Q Well, you understood, didn't you, before you went into this deal, that if Senator Durenberger stayed at the condo, he would get reimbursement at a certain rate for each night he spent at the condo. Didn't you understand that?

A Yes, I understood that.

Q When you said that, you know, you liked the idea that there could be somebody there during certain days, you'd fully expected to get paid for that, right?

A Well, I expected he was going to pay me, and I expected that he was going to get reimbursed, yes.

Q Had that been a subject of discussion with you or his staff?

A Well, the subject of him paying for staying there had been, certainly. And I guess, you know, I just assumed that. But I didn't understand anything about the rules. It didn't really make any difference to me. I had served in the Minnesota legislature and I supposed that those rules were just as straightforward as ours were, and that was, when you were out of town, you got paid per diem. So I didn't, it's not that; it wasn't any concern of mine.

Q Would you have let him stay in the condo if he didn't pay you anything, because of your friendship?

A Probably not. No. I wouldn't have bought the condo if I thought I was going to -- I wouldn't have bought it for my own use and I wouldn't have bought it as an investment, unless I found somebody who wanted to rent it Friday, Saturday and Sunday. He was the only guy I knew that might do that.

agreement on that price prior to the date of that letter of August 13, 1987?

A I can't testify that we had because I can't remember, you know, a specific date. This thing absolutely had a life of its own and it seemed t never ever reach --.

Q Can you help me out on this? I don't understand how in a letter dated August 13, '87, which is presumably written on or about August 13, '87, includes a provision saying that the sale will take place January 1, '87, some several months before the date of the letter?

Do you see what I'm talking about?

A Yes.

Q Can you help me out on that?

A I didn't write the letter.

You know, my recollection is that we had an agreement but, you know, obviously, a loose agreement, around the end of '86, that we were going to do this as of January 1st.

Q Well, you say, a loose agreement. I mean, you've been a businessman for a long time. You knew in January '87, you knew you didn't have the kind of agreement that if you had to go into court, you'd go into court on?

pretty unfortunate choice of words. The information was not available to me until -- I guess I frankly I probably didn't even tell the auditor what I was doing and --

Q Well, you say it's an unfortunate choice of words, but from looking at these documents, it was a retroactive deal, wasn't it?

A Well, from looking at the documents, yes, it was. But it was not. As far as my understanding, it is not.

Q Fine.

A Your pursuit is of the letter of the law and my defense is the spirit, and unfortunately, that's not a good defense in Washington, apparently.

Q Well, you don't have to defend yourself.

A You don't know what this is going to do to me when Amberger gets his hands on it or the Minneapolis papers. I do have to defend myself. In fact, my opportunity for defense is probably past. Oh, well, I guess that's not your problem.

MR. BENNETT: Excuse me. Just give me a moment.

(Discussion held off the record.)

BY MR. BENNETT:

Q I'm sorry, look at Exhibit 10, number 2. What income should we book for the period 1-1-87 through May 31, '87. Why would you be asking that question of Mahoney?

A Well, that relates to the number of times the Senator would have stayed in the condo during that period of time.

Q What was your understanding as to the role Mahoney and his firm was playing in this whole thing?

A Well, I think he was controlling it. He was -- I don't know just how to describe the role -- but he was the person on whom all of the activity turned.

Q Do you know if Senator Durenberger received reimbursement from either the Senate or his volunteer committee for all of his stays in the condominium?

A I wouldn't have any way of knowing.

Q You remember in your letter to him that we showed you earlier, you made some reference to the fact that he got more money than he was supposed to get. Do you remember that?

A No.

Q Well, let's go back to the exhibit. Look at exhibit, it's Exhibit 2.

A Yes, I've got it. You also must be aware that circumstances, didn't it?

A No, it didn't really anger me. I understand.

But I wanted to convey to him that I didn't feel that was the case.

Q And so you wrote that letter.

A Yes.

Q You wanted to set the record state.

A Mr. Bennett, you're going to greatly interfere with my communication with people in the future.

Q Not me. I'm just doing my job here.

A I didn't think I'd be faced with everything I'd done in life until I got to the Great Judge. I didn't know it would happen in Washington.

Q I'm glad you think my questions are that probing.

A Well, I didn't say that.

Q I don't put myself in that league, yet.

Let's take a look at Exhibit 12. This is a letter you sent to Doug Kelley, the Senator's AA. That's dated November 5, '87. I take it that's an accurate date?

A All of the letters that I wrote are dated the day on which they were written.

Q You say in the letter that, ne sale was to be done effective January 1st, and now I find out payments were made to the partnership at least through March."

Would you explain to me what you mean by that and what your concern is?

A I don't recall just what the circumstances were, but in trying to pull all these numbers together, getting the information from the woman who'd been doing the accounting for the partnership and everything, we found that there had been some payments, I think probably some per diem payments, for that period January through March, made to the partnership. And I was interested in having the record, you know, be clean and be proper. And now we found that this posed a problem for us. I felt it posed a problem because while I felt we had an effective date of January 1st, whoever should have cleaned that up hadn't cleaned it up, and, as a result, payments had been made to the partnership, so --.

Q Was that Mahoney who was supposed to have done all that?

A Well, I think he had a great deal of responsibility for it because I believe that some of the people who were making those payments and doing the other things hadn't been apprised of the fact that a sale was going to be made. So I don't know who but certainly he was in a position to have accomplished it.

Q Now, was Mahoney, I'm trying to define his role a little bit. Was he providing legal advice to you? You didn't view Mahoney as your lawyer, that's clear, right?

A No.

Q Who was he providing legal advice to, if you know?

A Well, my understanding was that he was the trustee of Durenberger's blind trust, that he was Durenberger's tax preparer and legal confidante.

Q Let's look at 13. I'm starting to feel from these cold letters, the frustration, it's coming through the pages, you say, "you're growing frustration." What is going on at this point in time, and what seriously is this growing frustration that you're having?

A Well, it's November 9, 1987. It's eleven months after I thought we had an understanding, and I'm getting --. Now the stuff is starting to flow to me, but I think this refers to a delinquent tax notice.

Q You keep talking about an understanding. I mean, who is that understanding between?

A Well, I, you know, the understanding has to be between Durenberger is the guy who's involved and it has to be between him and I. I mean, other people are obviously involved but I couldn't make a deal outside of an understanding with him.

Q All right. Let's look at Exhibit 14.

Did you understand that Senator Durenberger could not collect reimbursements from the Senate unless he had a bill from you or an invoice from ISC?

A Well, yes, I suppose, you know, understand that. We did, we invoiced them. It's a good business practice, it seems to me, to invoice them.

Q If you look at the second page, it says "enclosed, also find an example of the form of bill previously submitted to Heidi at Senator Durenberger's office in Washington. In order that reimbursement can be made from the Senate, a similar type of bill is necessary," etc. Do you see that?

A Yes.

Q Had you ever received, or Independent Service Company ever received any letters prior to this one the name of David Durenberger and Gilda Beth, who is his wife, and some in the Durenberger-Scherer Partnership. In any event, this memo refers to the fact that there were some taxes.

Q Well, look at following that, we have the notice of unpaid property taxes, and you'll see it's dated 10-27-87, okay?

A Yes.

Q Now, you know, my question is simply this. That if the sale was effective on January 1, '87, which is what you're telling us, as I understand it --

A Well, I thought you were going to come somewhere to documents that show a date of March or April 1st, and that we're going to --

Q Well, I don't know if we'll get there, or not. But I want to give you every opportunity to make a statement and be fair to you. Because, as you say, you know, you're involved in this, even though -- but that's not my question. The point of my question is, is that if you had an agreement effective January '87, why would you be writing this letter suggesting that someone other than yourself should be paying taxes which were sent to you and noticed as of November '87?

I mean, this letter with the attachment would seem to suggest that you didn't have this so-called agreement in January of '87.

You see what I'm getting at?

A Yes, yes. A few minutes ago, you referred to a letter about payments that had been made to the partnership. I don't remember where that was, but the document that Dave signed is a document dated April 1st.

Q '87?

A Yes. Isn't that coming up somewhere here?

Q Well, maybe.

A Well, because, and the reason, here, when these payments turned up that had been made to the partnership between January and April 1st, I wanted this to be a clean, proper deal and since those payments had been made, it seemed to me that the reasonable way to do that was to make the deal effective April 1st, get beyond when those partnership payments had been made, and so there wouldn't be any confusion or any problem about that. And so the transaction date was ultimately set at April 1st, and everything that we did dates from April 1st.

So that I agree with you, and these letters are being written and this information is being discussed, based on that. And I can't remember -- this is 1987 unpaid tax due --

Q Well, did you let them lapse. Did you let the tax payments lapse?

A No.

Q Who did? If you remember or know?

A Well, the statement here is Durenberger-Scherer partnership, so I don't know who let them lapse.

Q Let's look at 17.

Why would you not want to pay the delinquent taxes but would pay what appears to be overdue association fees?

A I think that my accountants work papers will show that we adjusted the price. Paid those dues and then adjusted the outstanding note to cover those. Which was simply a matter of we could write the check for the amount and have them pay them, or we could pay them. It didn't seem to me to make a whole lot of difference.

Q Let's look at Exhibit 18. Now, am I correct that after you paid the delinquent taxes, the contract of sale had to be redrafted?

billing. But I would believe that was what she meant.

Q Okay.

Why weren't bills sent for Senator Durenberger's use of the condominium before December of '87, if you know?

A Why weren't the bills sent earlier?

Q Yes. Why weren't the bills sent earlier?

A Well, probably because it wasn't a big rush but also probably because we didn't really know how to proceed with that. We got that letter from Tamara telling us how to do it, wasn't that in November?

Q Well, if the sale was effective in January 1, '87, why didn't you bill Senator Durenberger for his condominium stays for January through March of '87?

A In the course of developing the information, we found that there had been transactions with the partnership in the period January through March. We adjusted the effective date then to April 1st, so as not to have any conflict with those transactions. Somebody hadn't gotten their work done. They kept doing business at the old store, and I wanted a clean deal, and I said, let's change, you know, can't we change the effective date them, to get past the point when those have been made. So I presume per diem was collected for that period of time but it was not, it had been collected and paid to the partnership.

Q You know that or assume that?

A No, I assume that.

Q All right, look at 19A. Do you see that note? That's a note of yours to Joan on the bottom. Why are you asking her to follow up regarding corrected letter agreement re sale date?

A What I just told you. The January, February, March transactions that the partnership had done messed up that period of time, and it seemed, rather than try to unwind those, it was better to change the date.

MR. BENNETT: Do you want to take a short break?

THE WITNESS: Well, I should, I need to pretty soon.

MR. BENNETT: Okay, why don't we. This will be a good spot, and think we'll be under an hour when we come back.

THE WITNESS: I'm enjoying this so much, I can't --

(Laughter.)

MR. BENNETT: Well, we can make it two, if you want.

(Laughter.)

(Recess.)

MR. BENNETT: I'm going to give you, when this is all over, the opportunity to state for the record, whatever you want to say.

BY MR. BENNETT:

Q Would you tell me what use you made of this condo yourself? Did you use it often? How did you coordinate with Senator Durenberger so that you wouldn't be both there at the same time?

A My use of it fluctuates some because I have a number of clients in the Twin Cities. My pattern is to kind of concentrate my activity in the city to generally Tuesday, Wednesday, Thursday, or Wednesday, Thursday and Friday, which means that I am most apt to be using it on one of those nights, Tuesday or Wednesday or Thursday night. That coincides for the most part very well with his schedule because if he's is back there, particularly during session, he is back there rarely on Thursday nights but Friday and Saturday and Sunday. So it works out. I generally check, if I'm going to be there on a Friday, or if my wife and I are going to use it, I generally check with the office to find out if he is in town.

Q Would you look at Exhibits 11 and 24? These appear to be lists advising you when the Senator intended to use the condo. Is that a fair statement?

A Yes.

Q We cannot locate, nor do we have any reason to believe they exist, that you have ever received any notices like this before October of '87. Do you know if you had ever gotten lists from him in January, February, March, April, May, June?

A Can we understand that the transaction date was changed to April 1st? There was no activity with Independent Service Company in the condo from January to April 1st. Those dates were changed. The documents that were signed were changed. And they were changed because there had been as we were trying to get the paper work done, there had been activity there. So January to April 1st, is not a consideration.

Q But do you know if Senator Durenberger got reimbursed from January --

A I don't have any idea if he got reimbursed from

I don't have any -- I never saw anybody there. In fact, I have never been there when he's been there.

Q Would you look at Exhibit 21? Whose notes? What do you identify this as? Do you know what this letter is all about?

A Well, Joan Sorenson is my bookkeeper. It's about unfinished business.

Q Let's look at Exhibit 22. Whose note is that at the bottom of 22, do you know?

A That's Joan Sorenson's writing.

Q You know, the date there is February 3, '88, and your first sentence says, "I know everyone is interested in putting the condo sale to bed."

I mean, as late as February 3, '88, this thing still isn't a resolved thing, is it?

A Yes, the deal is resolved; the paper work isn't done.

Q And in the last paragraph, you say, "if you'll prepare a new note for $10,299.96, dated April 1, '87, redo the contract for deed to reflect an April 1st purchase."

Why are you saying that something should be reflecting an April 1st purchase?

A Well, that was, the January to March period involved transactions with the partnership which I did not want to have involved in the transaction. I asked to have it changed.

Q What was it you were troubled about?

A Well, those payments had been made by --

Q Look, you understand this better than me so I'm not asking this to irritate you.

A Yes. The payments had been made by the partnership. I don't remember what payments they were, now, and I think my recollection is that there had been some per diem collected that was paid to the partnership. And rather than try to straighten that out by transactions between the partnership or whoever they'd been paid to, an independent service company, I just suggested that the transaction have an effective date of April 1st, instead of January 1st.

Q Would you look at Exhibit 25? This is a Mahoney letter to you, and then look in number 4. They talk abcut the agreement regarding the sale of the condo by and between the Durenberger Blind Trust and your company.

Where did this blind trust come into it at this point, do you know?

didn't need that protection.

Q I'm sure not going to ask you what you say about people that you don't like if that's what you say about lawyers who you say you do like.

A I just didn't see any point in it.

Q Who was that lawyer, do you remember?

A Dick Davies.

Q Davies.

Would you look at 26B?

Can you tell me how the rate of $85 a day -- and I'm not questioning the amount -- I mean, I'm just asking how that rate was fixed?

A Well, it was probably with a little bit of Kentucky windage, a little bit of consideration of how often Durenberger thought he was going to use the condo, and a little bit of what the marketplace seemed to ask for a room. I guess there was really nothing scientific about it.

Q Do you remember when, can you give us your best estimate as to when these would have been signed by you and by him. Under yours, a date appears. Do you think that that is the accurate date, 4-1-87, that you signed it?

A No. No. That is the operational date.

Q When do you think you would have signed it?

A I don't think I would have signed it. I think this was probably one of the documents that was part of the material sent to me by Mahoney in August.

Q Of '87?

A Yes.

Q So the date under there of 4-1-87 wouldn't be accurate?

A That wouldn't be accurate as to the date it was signed. It would be accurate as to the date it was operational.

Q When you do you think David Durenberger would have signed it, after you?

A Yes. By quite some time.

Q A month, weeks, couple of months?

A Months. I think there is a letter some place in the file. Maybe in '88 or even '89. When was my, that document of gentle persuasion that I hand wrote?

Q The document of gentle persuasion was September 8, '89

A Okay. It probably hadn't been received then.

Q Okay. In the residential lease, there's some seemed to me we had a purchase agreement.

Q Look at Exhibit 29. Your letter of April 7, '88, once more you express your frustration. Why is Mahoney, do you have a view as to why Mahoney is so slow in getting the paper work done?

A I haven't the faintest idea.

Q I mean, do you think it's sloppiness, slowness or was there a reason for it? What do you believe now as you testify here today? I mean, you certainly can't say he forgot. You'd been reminding him on a pretty regular basis.

A I really can't, I don't think it is appropriate for me to speculate.

Q It's not inappropriate, as long as you clearly identify it as being speculation. I'm trying to find out the facts. What do you think? What's your speculation?

A Well, I can't comprehend why he would not have completed that. I just don't know. I can't, it is not the kind of a thing where I would expect somebody to have sinister hidden agenda. I mean, you know. I don't know.

Q Look at Exhibit 30, would you? This is Senator Durenberger's a note from him to Mike Mahoney. I don't know if you've ever seen this before, though it indicates you got a copy.

It says, "you know, Paul Overgaard raised the rent from $65 to $85, effective 4-1-87."

Now, what do you understand the Senator's concerns to be?

A He thinks I'm making money, apparently.

Q Well, is there something wrong with that?

A I don't know. Not in my book. I don't know what his concern was.

Q Your making money would be consistent with the intentions which you say you went into the agreement for?

A Sure.

Q Look at about the third page in, fourth page in. There's an entry, it says "$9500," then it says 120 equal 79 per day averaged 8.75 days for April to October, used $75 on billing sent December 7, '87, changed to $85 per instructs." Whose writing is that?

A This writing is my finance girl, bookkeeper.

Q Who gave those instructions?

A I did.

Q And why and how was that rate arrived at?

A Well, I can't tell you exactly. I think that's

Q Is that correct?

A I presume these numbers add up to the number she says. Yes. That's right.

Q Let me, if I could, direct your attention in the exhibit book to Exhibits 36 and 37. Exhibit 36 is a letter to you from Mr. Mahoney dated September 15, 1988 and it states, quote:

"Enclosed with this letter, find the original Certificate of Title for the property located 1225 LaSalle Avenue, Apartment No. 603, Minneapolis, Minnesota. We have not recorded the deed transfer and title to your company with the Recorder's Office. We do not believe it is necessary to do so until and unless you intend to sell such property." Quote.

Exhibit 37 then appears to be a response to Mr. Mahoney, a letter dated December 21, 1988, and it states, quote:

"I received a Certificate of Title on the condo today. I agree that it doesn't need to be recorded at this time." Quote.

My question is why did you agree that it was not necessary to record the document at that time?

A Well, for what I said earlier, I felt that I had a contract for deed and, on payment of the deed, that I would get the title. And I wasn't particularly concerned about having it at that point.

Q I'm a little confused about your understanding of the contract for deed. You referenced it several times. It was your understanding that when you made a particular payment, you were entitled to receive the deed on the property? Is that correct?

I do not understand.

A The purchase agreement involved assumption of the mortgage, payment of the mortgage, and a note to Dave. And I assumed that I could get the Certificate at such time as I had paid him off and assume the mortgage at the bank.

In other words, until I did that, I was buying from him on a contract to get the deed.

Q So, you didn't understand that you had title to the property?

A The contract for deed, in my opinion, is title to the property. The contract for deed is subject to the contract. You're going to get the deed. That is, a property transaction -- that I have used when I purchased property before.

Q What did you understand you would get at the time you made the payment to the Senator under the terms of the promissory note?

A The payment of the -- well, I guess I didn't differentiate, but I assumed that when I had paid him the second mortgage note that I had given him --

Q Right.

A -- and gotten the bank to transfer or permit assumptions of the mortgage, that I would then be entitled to the deed.

Q In the Exhibit 37, you also indicated to Mr. Mahoney, quote:

"You have not yet sent me the original executed quit claim deed, however, and I do want that as evidence of the fact that I have purchased the place." Quote.

September 1988, you believed that you were entitled to the deed.

A There is a document in here that I think is referred to as a quit claim deed. I guess I -- I don't want to get into a discussion of terms that I don't fully understand. I believed that I was buying the property and entitled to a document which said "Subject to completion of the terms."

Q I understand that you don't want to be testifying about the legal niceties of the transfer, but I do want to try to understand your understanding of the deal.

An I correct in understanding that you believe that subject to the completion of the deal, i.e., promise of the promissory note, you would be entitled to receive evidence of title to the property?

A Subject to that payment and the assumption of the mortgage. In other words, when all of the --

Q By your understanding, you were not entitled to receive title to the property until 1992, the date of the payment on the promissory note.

Is that right?

A Yes. Let me try to clarify what I am saying. I have purchased three different pieces of property, in which there was a mortgage and the seller continued to hold the mortgage. I purchased the property on a contract for deed; when I complete my contract, I get the deed.

The completion of the contract was subject to the payment of any second mortgage that the seller was going to hold plus either the assumption or the payment of the first mortgage.

Now, the first mortgage was held by the bank, Commercial State Bank. The second mortgage is a note that I gave to David Durenberger. And my understanding of the situation is that I have a contract with Durenberger and that contract would promise me a deed subject to completion of the terms of the contract.

Q So that when the contract was completed with the payment of the monies to Senator Durenberger under the terms of the promissory note in 1992, you would then have title or deed to the property?

A Assuming that I also had assumed the mortgage.

Q Which, according to the documents we have looked at, you did.

A That has been done, yes.

Q As of October 1989.

A Yes.

Q What was your understanding of who owned the property or held the title until that date, until 1992? The Senator?

A My idea is that I own the property subject to the completion of my contract to him, and that he had absolutely no right to that property unless I defaulted in the provisions of my contract.

Q Did you ever discuss with Senator Durenberger whether or not he would have a right, perhaps a right of first refusal, to purchase the property back from you?

A That was discussed, I believe, by -- I don't remember if it was Mahoney or who it was -- really in the discussion. And, obviously, from the note that we looked at earlier, it was a subject of discussion and I do not understand and I don't believe the Senator understands that there is any such right.

But, the note that you showed me was one that I did not remember. And, obviously, I read it. It is my handwriting, but --

Q And it was accurate at the time that you wrote it? Is that right? Accurately reflected your intent?

A I can't say that it didn't because that's what it says.

Q If you would, since you have raised that, let's look again at Exhibit 3 in the book before you, which is the note that you just mentioned.

UNITED STATES SENATE
Select Committee on Ethics
Washington, D.C.

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In the Matter of: :
:
Preliminary Inquiry concerning :
Senator David Durenberger :
:
- - - - - - - - - - - - - - - - - - - X

Suite 540
Embassy Suites
425 South Seventh Street
Minneapolis, Minnesota 55415

Wednesday,
April 26, 1989

Personal Interview/Deposition of:

JIM M. ROAN

a witness, called for examination by counsel for the Committee, pursuant to notice, commencing at 4:26 p.m., before William J. Moffitt, a court reporter, when were present on behalf of the respective parties:

APPEARANCES:

On Behalf of the Committee:

WILSON ABNEY, Esquire
Staff Director and Chief Counsel

VICTOR BAIRD, Esquire
Counsel

HOUSTON FULLER
Offic of Special Investigations
General Accounting Office

what you do, and we will go backwards from there. Okay?

A. My name is Jim Roan, and I am currently living in Eden Prairie, Minnesota, currently an institutional equity trader for Piper, Jaffe and Hopwood, a brokerage firm here in the Minneapolis area. Prior to that I was Special Assistant to Dave Durenberger for a little over a year in Washington. Prior to that I was in school in California.

Q. Tell us, if you would, how you made the transition from student in California to Special Assistant on the Senator's staff.

A. I attended Souther California College in Newport Beach, California, a political science major and an anthropology and sociology major, as well. I went out to Washington D.C. the last semester of my senior year on a program called "The American Studies Program," in which you spend a semester in Washington, D.C., studying about American government, at which time I met Dave Durenberger. I was introduced to him at a function.

He had mentioned, through a Christian organization down there, that he was looking for somebody to help on his staff in a capacity that would be more of a liaison between the office and him, wherever he may be, between him and the floor, kind of an all-around right-hand man.

The proposal was put before me because I was, at the time, engaged to a girl from Minnesota, who I later

Q. What were you doing up here with him on that one trip?

A. I just came up here. I think I flew up here with hime. I might have been interviewing with Honeywell or Cargill at the time, and I think I ended going back with him on Sunday, did not do anything with him up here. I went back with him because the Senate was going to be in session on the Sunday, and I wanted to make sure I was there with him.

Q. Let's go back to Washington. When you arrived in May of 1985, did you become aware that the Senator was making appearances before audiences, where he would have been invited to appear for a fee being paid?

A. Well, sure. I mean, I was right out of college, so I wasn't really aware, initially, of what was a speech for Piranha Press, and what was a speech which was a stipend speech and which was an honoraium speech. Now, that probably I became aware of into the summer, as I got more involved with him.

But if I recall correctly, I think honorarium changes were made in the Senate in maybe late 1984 or early 1985. Caps were put on what they could make and could not make from an honorarium standpoint, and I know those issues had come up.

What are you asking, again?

Q. Well, let me ask you another question. You became aware that the Senator had an agreement with his publisher, Piranha Press?

A. Yeah, and I don't recall what date or when, exactly, I became aware of that. I just know that one day we got the "Neither Madmen Nor Messiahs" copies in. I was made aware that we would be making speeches away from Capitol Hill on behalf of Piranha Press, on behalf of his publisher, and that we needed to make sure that the book was with us at all times. That was part of my responsibility, to make sure it was there.

You know, from that point forward, without much more thought given, I just always made sure whether it was a Piranha speech or whether it was an honorarium speech.

If I remember correctly, $2000 maximum could be paid, honorarium, with a cap. I don't know what the cap was at the time, but there was a cap on the honorarium speeches then.

Initially I was not involved, and never really was involved, in the decisionmaking of which speech would be which. I sat in on meetings where those decisions were made but was not a decisionmaker.

Q. Who would attend those meetings?

A. Well, this was much later. As you know, Ann Kelly was Dave's scheduling secretary when I first arrived. She subsequently went to law school, at which time Jodi Mathison well, actually, another girl, and I forget her name, came in whatsoever. He very well could have. I mean, like I said before, my main concerns -- I mean, I was concentrating so much on making sure this and that and the other were done right, I didn't hear any of the speeches probably for the first three months, making sure he was getting messages back from me. At that point I was very concerned about my performance and less concerned about what he was doing.

Q. Right. And after a few months you did become aware of some of the more subtle distinctions, that you hadn't been aware of before?

A. Exactly.

Q. And one of those was that he made appearances which were honorarium appearances, and he made speeches which were Piranha Press appearances?

A. Yes.

Q. Who informed you about your responsibilities relative to the Piranha Press appearances? Was it the Senator?

A. That's a good question. I do not recall who initially told me that. It might very well have been Ann Kelly, just saying, "You've got to make sure, on this speech, it is a Piranha Press speech" or something like that, "that we have this book, with several copies for people there." That kind of thing. It could have been her.

It could have been Doug Kelley, because I remember Dough was very adamant, from the first time I remember giving a Piranha speech, that those books were there. I mean, Doug seemed to be the most adamant of anyone there that, "Hey, make sure we have this thing right."

But I remember forgetting the book on one occasion, too, and Dave being very mad about that, too. So, you know --

BY MR. AGNEY:

Q. Why? Why would he have been angry?

A. Well, I guess, recalling back, that he knew it was very important for him, if he was giving this on behalf of Piranha Press, to be able to give that to people in the audiences and to make it very clear to them what he was there for. That is what I'm guessing.

Q. He didn't indicate to you why he was angry?

A. No, but that's not unusual (laughing). I mean, he had so many things going on in his mind. I mean, he just said, "Hey, this is a Piranha Press speech. I've got to have the god-damned book here," boom, boom, boom, and, you know, "Run back in and get it," or whatever.

BY MR. BAIRD:

Q. By having the book there, did he mean copies of the book available?

A. Oh, yeah, sure.

Q. For those in attendance? Not just one book?

A. Yeah. I remember that I was -- now, we never had enough books. If your question is did we have enough books for everybody in attendance there -- no. I mean, we didn't carry three boxes of books in the back of his car, and take them in. But there were always a few copies there, if people wanted them immediately. As I told you when we talked before, I was always willing, and did on many occasions, to take the names -- I don't want to say "many," because I don't think a lot of them sold -- but take names of people who might want the book, want a copy. They would give me their business cards or something, and say, "Get me a copy of this book." I'd write a note on the back and give it to Ann Kelly or Jodi, and I am assuming they would talk to Piranha and make sure that they got a copy of the book.

Q. Do you know if people actually paid for those copies?

A. I have no idea. I never collected money.

Q. That was my next question. Were the books there for the purpose of being sold at the appearances?

A. No. We did not sell the books at the appearances -- I never sold a book at an appearance.

Q. Did you ever see the Senator sell one?

A. No. That's not Dave Durenberger. I mean, if he was going to sell the books, I would have sold them. He wasn't going to collect checks from anybody. So, no, I'm sure he didn't sell any, and I didn't sell any, so I assume none were sold at appearances.

Q. Did he tell the audience that the books were for sale?

A. That's a good question. I think he did, but I'm not sure. If I am thinking back correctly, I think he'd often say, "I obviously would like for everybody to pick up a copy of this. If I remember correctly, they are being sold at B. Dalton bookstores. If not, if you would rather pick one up here, my good friend Jim is right up there. Give him your business card, and he will make sure you get a copy." That kind of thing.

Q. Suppose there were copies available there. What did he tell them about picking up there and taking the books with them?

A. If he got asked a question like that, he'd say, "You'll have to talk to Jim right after this. I'm sure he'll find a way to get you one today, or one sent to you right away" -- something like that. And I don't know if Piranha charged him for the books or not. I just know I gave the business cards or the addresses to Jodi, at which times they'd get whatever they wanted.

BY MR. ABNEY:

Q. You gave the business cards or addresses to -- ?

A. Jodi Mathison.

Q. Were those business cards of people who would say, "Hey, I would like to have a copy of the book"? Or business cards of people who actually picked up copies of the book and said, "Bill me for them"?

A. Those are people who had wanted a copy of the book.

Q. But weren't taking them right then?

A. No. We gave away very few books at those functions.

BY MR. BAIRD:

Q. You gave away very few, and you sold none?

A. I never remember getting a check for a book. Now, you know -- I don't recall ever selling a book. That's all I can say. I mean, very well somebody might have handed me a check the first time I went there and I forgot about it; but I really don't think I ever did.

Q. What was the purpose of taking -- how many would you take into a meeting? A dozen? Two dozen, typically?

A. No. I would say I probably took five in. But we did not take a lot in.

Q. What was the purpose of those five volumes?

A. Oh, I think one was for Dave to be able to say who he was there on behalf of; and, secondly, if any close friend or somebody like that came up and said, "Hey, I'm in town for a couple of days. It would be nice if I could get a copy today." We would try to get him a copy right then.

But that didn't happen every often; so, more often than not, people came up, they gave me their business cards, and that's it would start, and we sent it off. Yes, "Can you see that Dave gets me a copy of this book?" Or something. I don't know how they were billed or weren't billed. I don't know.

Q. You didn't discuss that with him?

A. No. I always assumed it was being taken care of by the publisher. I mean, Mike Mahoney or whoever was the publisher. I always thought it was Mike. I know Mike's the lawyer, but I know he handled his connection somehow with Piranha Press. I just assumed that they always took care of that. I was not involved in that end of it.

Q. What did you know about how the Piranha Press appearances were scheduled or handled, other than that you would attend a meeting, a decision would be made that, "Yes, I'm going to appear before a group next week, and it is going to be a Piranha Press appearance"? The Senator would make that decision. Did you know how that was followed through on by the office?

A. So what you are asking is, if it was decided this was going to be a Piranha Press speech, how that was followed through?

Q. Yes.

A. I know that we never received checks for those speeches, for the stipend we received. I think that was all handled by Piranha Press. From the point we accepted a speech on behalf of Piranha Press, the financial end of that was all

A. Oh, I think on some occasions he got up and said, you know, "Here's my book, "Neither Madmen Nor Messiahs." And by the way, I've got a second book coming out, for those of you interested in health care issues, that I think is going to be a terrific book." I mean, he was a great promoter: "Hey, this is going to be a great book, and I expect it to be out in the next six-eight weeks" or a year. I can't remember.

Q. Is that the kind of thing he would typically say at a Piranha Press appearance?

A. Yeah.

Q. Did you ever attend a Piranha Press appearance with him where he did not discuss Piranha Press or his book?

A. I can't say that I know for a fact he did not. I can't say that I know for a fact that he did. You've got to remember, a lot of the time at these speeches I was recording the speech. I was also running back to the phone, checking to see what was going on on the floor. I talked to them about the next function we needed to be at. So, most of the time I ignored his speech. And I can't honestly say.

You know, most of the time I had heard the damn speech so many times, I didn't care to hear it again, to be honest. I mean, I was running back and forth and could have ~~cared~~ less about the speech.

But one of the things I mentioned before, that I did tape the speeches, and Victor and I had some discussions

discussions regarding that. Oftentimes when I taped those speeches, I started it after his introduction; because what we were interested in was not what he said -- I mean, he has very, very similar jokes. I'm sure if you listened to those speeches, his favorite oxymoron joke, that I still remember --

MR. ABNEY: You don't have to give that.

(Laughter)

THE WITNESS: I'm sure you heard it.

But, so, I would skip a lot of that, because there was no need to put it on tape. What was important to us was to get the central point of the speech, to see how he was interacting with the audience, to see how we might improve on that speech when he gave it in the future. His jokes were going to be his jokes, regardless. I mean, we weren't going to change those, and that was all part of the introduction.

So I would guess, if you listened to the tapes, that some of them have his introduction in them; more often than not, somebody got up and talked about him a lot longer than he wanted to be talked about, and so I would skip that out.

BY MR. BAIRD:

Q. Did you ever talk to Michael Mahoney?

A. I didn't get to know Mike really at all. I think Jodi did most of the talking with Mike, or Doug Kelley. I know Doug Kelley knows Mike fairly well. But I didn't make any great strides to know Mike, nor did Mike make any great arrangement between the Senator and Piranha Press?

A. No. Those conversations were Doug Kelley's or the Senator's. Those were senior staff members' conversations, if anybody, if not the Senator himself. I did not arrange any of the finances or anything like that.

Q. Did you ever hear either of them discuss the arrangement in general terms, not specific?

A. No. I mean, I basically knew what the arrangement was: Dave promoted his book and got paid. I don't know what percentage of the amount that came in he got paid; whether it was all of it, whether it was 10 percent of it, I have no idea. But he promoted his book, and my guess is received payment for promotion of his book. Again, that is basically what I know.

Q. Again, when you say he "promoted his book," that simply consisted of, "Hey, I've got this publisher, and I've written this book. Here it is. It can be picked up at B. Dalton bookstores."

A. Yeah.

Q. But, again, there was no effort to sell the books there? As far as you were aware, Gary Diamond was never there with a Mastercard or an American Express machine?

(Laughter)

A. No. This was not Jimmie Carter signing books in front of B. Dalton and selling books at the same time. This one sent," or something. And that wasn't a Piranha speech, but that would come up in a question and answer session, or something like that.

Q. I'm just going to try to get a handle on a rough number here. Let's assume, for the purpose of this question, that everybody gave you their card, or everybody gave your their address, and said, "Please, I would like to have a copy of that book." Let's assume that every one of those people eventually paid the publisher for the value of the book. Over the course of your stay there, how many books, approximately, would have been sold, total, in that manner? If everything was referred.

A. From my card?

Q. Yeah. If everything you referred over resulted in the sale of a book.

A. Well, just myself, it wasn't a great deal. I would say the maximum cards I turned in would be 100 -- maximum. But on many occasions people would ask how they could get a book from me, and I would say, "Well, the easiest thing is to go to a B. Dalton and buy one." And that happened a lot more frequently. I said, "It's sold in all bookstores, but B. Dalton is probably the easiest one; I know it's in that store." And most people just chose to do it that way. People weren't looking for a freebie.

Q. Of the books that you would have carried into the

ADDENDUM TO DEPOSITION OF Jim M. Roane

DATE OF DEPOSITION April 26, 1989

Page	Line	Incorrect Wording	Correct Wording
1-54		Roan	Roane
14	17	delete word "God Damn"	
26	3	delete and comple sentance "Senate Related Speeches".	
33 34	7- 18	The statements ~~made~~ made here in are only speculation on my part. I have no direct recollection of this being the Sequence of events	

CERTIFICATE OF DEPONENT

I hereby certify that I have read and examined the foregoing transcript of my deposition and that with corrections made by me, if any, the transcript constitutes a true, accurate and complete record of the testimony given by me.

(Signature of Deponent)

Sworn to and subscribed before me this 18 day of May, 1989.

Notary Public in and for

certained in the normal course of its supervisory responsibilities that it has reason to believe that a violation has occurred or may occur pursuant to 11 CFR Part 111, and remains in force until the Commission has finally concluded all action with respect to the enforcement matter in question.

(c) Nothing in this section shall be construed to prohibit contact between a respondent or respondent's attorney and any attorney or staff member of the Office of General Counsel in the course of representing the Commission or the respondent with respect to an enforcement proceeding or civil action. No statement made by such a Commission attorney or staff member during any such communication shall bind or estop the Commission in any way.

§ 111.23 Representation by counsel; notification.

(a) If a respondent wishes to be represented by counsel with regard to any matter pending before the Commission, respondent shall so advise the Commission by sending a letter of representation signed by the respondent, which letter shall state the following:

(1) The name, address, and telephone number of the counsel;

(2) A statement authorizing such counsel to receive any and all notifications and other communications from the Commission on behalf of respondent.

(b) Upon receipt of a letter of representation, the Commission shall have no contact with respondent except through the designated counsel unless authorized in writing by respondent.

PART 112—ADVISORY OPINIONS (2 U.S.C. 437f)

Sec.

112.1 Requests for advisory opinions (2 U.S.C. 437f(a)(1)).
112.2 Public availability of requests (2 U.S.C. 437f(d)).
112.3 Written comments on requests (2 U.S.C. 437f(d)).
112.4 Issuance of advisory opinions (2 U.S.C. 437f (a) and (b)).
112.5 Reliance on advisory opinions (2 U.S.C. 437f(c)).
112.6 Reconsideration of advisory opinions.

AUTHORITY: 2 U.S.C. 437f, 438(a)(8).

SOURCE: 45 FR 15123, Mar. 7, 1980, unless otherwise noted.

§ 112.1 Requests for advisory opinions (2 U.S.C. 437f(a)(1)).

(a) Any person may request in writing an advisory opinion concerning the application of the Act, chapters 95 or 96 of the Internal Revenue Code of 1954, or any regulation prescribed by the Commission. An authorized agent of the requesting person may submit the advisory opinion request, but the agent shall disclose the identity of his or her principal.

(b) The written advisory opinion request shall set forth a specific transaction or activity that the requesting person plans to undertake or is presently undertaking and intends to undertake in the future. Requests presenting a general question of interpretation, or posing a hypothetical situation, or regarding the activities of third parties, do not qualify as advisory opinion requests.

(c) Advisory opinion requests shall include a complete description of all facts relevant to the specific transaction or activity with respect to which the request is made.

(d) The Office of General Counsel shall review all requests for advisory opinions submitted under 11 CFR 112.1. If the Office of General Counsel determines that a request for an advisory opinion is incomplete or otherwise not qualified under 11 CFR 112.1, it shall, within 10 calendar days of receipt of such request, notify the requesting person and specify the deficiencies in the request.

(e) Advisory opinion requests should be sent to the Federal Election Commission, Office of General Counsel, 999 E Street, NW., Washington, DC 20463.

(f) Upon receipt by the Commission, each request which qualifies as an advisory opinion request (AOR) under 11 CFR 112.1 shall be assigned an AOR number for reference purposes.

[45 FR 15123, Mar. 7, 1980, as amended at 50 FR 50778, Dec. 12, 1985]

SUPPLEMENTAL AFFIDAVIT OF DAVID J. STEINGART

The purpose of this affidavit is to supplement the affidavit of David J. Steingart, dated June 7, 1990 ("Original Affidavit").

DAVID J. STEINGART, being sworn, deposes and says:

1. In connection with Paragraph 6 of the Original Affidavit: I prepared the Partnership Agreement and related documents at the direction and under the supervision of Mr. Mahoney. In so doing, I had no intent to deceive the United States Senate. During my discussions with Mr. Mahoney and my limited contact with Senator Durenberger, I was not made aware of any facts or intentions that led me to believe that the Partnership Agreement and related documents were intended to deceive the United States Senate or to obtain reimbursements for Senator Durenberger to which he was not legally entitled.

2. In connection with Paragraph 9 of the Original Affidavit: In effecting the name change, I had no intent to deceive the United States Senate. During my discussions with Mr. Mahoney and my limited contacts with Senator Durenberger's staff regarding the name change, I was not made aware of any facts or intentions that led me to believe that the name change was intended to deceive the United States Senate or to obtain reimbursements for Senator Durenberger to which he was not legally entitled.

DATED: This 11th day of June, 1990.

David J. Steingart

Subscribed and sworn to before
me this 11th day of June 1990,
by David J. Steingart.

Ruth Ann Lorenz
Notary Public
My Commission Expires: 12/17/91

RUTH ANN LORENZ
NOTARY PUBLIC - MINNESOTA
HENNEPIN COUNTY
My commission expires 12/17/91

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TESTIMONY OF PAUL A MAGNUSON

PAUL A. MAGNUSON, being first duly sworn, testifies as follows:

1. I am a United States District Court Judge for the District of Minnesota, having served in this capacity since November 16, 1981. I make this testimony in connection with the current proceedings before the United States Senate Select Committee on Ethics involving Senator David F. Durenberger.

2. I have known Senator Durenberger since 1962, when we first worked together on a professional matter. I was a law student-claims adjuster during Senator Durenberger's initial years of law practice. Between 1963 and 1967, Senator Durenberger and I practiced law in the same firm. I consider him to be one of my closest friends and I trust that he holds me in similar regard.

3. I have visited frequently with Senator Durenberger since he entered the Senate. For a number of years we have met informally, along with Gene Holderness, on a fairly regular basis.

4. At those meetings, and at other times, we often discussed Senator Durenberger's personal affairs. I have intimate knowledge regarding most of the problems and pressures that Senator Durenberger has faced in recent years.

5. David Durenberger did not enter the U.S. Senate in 1978 as a man of great monetary substance. His subsequent income, as far as I am aware, has come essentially from his Senate salary

Exhibit 112

and from fees for speaking commitments. His wife, Penny, has been a housewife and student, and has worked only infrequently.

6. I am aware that Senator Durenberger had to borrow heavily to remain working as a U.S. Senator and to live in the Washington, D.C. area. It eventually became financially impossible for him to own a home both in Washington and in Minnesota.

7. I am also aware of several other factors which have increased the financial pressures on Senator Durenberger. One of these factors was the limited restriction, imposed in 1984, on the amount of honoraria a Senator could earn. A second factor involved the educational expenses of his four sons. During this period they attended college or private preparatory school. For three years his wife, Penny, also studied towards a Masters Degree in social work from Catholic University. A final factor placing financial pressure on Senator Durenberger was the chemical dependency problem experienced by two of his sons. They required periods of institutional care which resulted in costly medical expenses.

8. Unfortunately, financial problems were not the only difficulties Senator Durenberger has experienced. His first wife, Judy, had died from cancer after the birth of their fourth son. He subsequently married his present wife, Penny, whose husband had been killed in Viet Nam. He and Penny were separated for some twenty months in 1985 and 1986. During this period Senator Durenberger lived, while in Washington, at a religious

retreat center known as The Cedars. He also consulted a marriage counselor in Concord, Massachusetts, on a regular basis. Raising four young boys who lost their mother weighed heavily on Senator Durenberger. Their suffering has caused him much pain. He remains closely bonded to each of them. Both his spiritual life and his consultations have been extremely important in helping him work through the emotional distresses caused by such events.

9. While carrying heavy personal burdens, Senator Durenberger was working prodigious hours in his job as a U. S. Senator. He truly believes that he can effect significant changes in this role and has a passion for seeking out means to communicate his ideas. He enjoys speaking and believes that it is an important part of his job. His workload and his personal financial problems had a profoundly enervating effect on him. Many times he appeared exhausted. While he always seemed to focus well upon his senatorial duties, it was apparent that he paid little or no attention to the details of his personal life. He tended to turn over such matters to his staff, his lawyers, and even his friends, and to rely heavily on their advice and on their handling of such affairs. I believe that this combination of personal and financial problems, coupled with the extraordinary efforts Senator Durenberger put into his senatorial duties often left him too mentally and physically exhausted to render judgment about his personal financial matters and made him all too susceptible to the poor legal advice I believe he received in this area.

10. My conversations with Senator Durenberger have led me to believe that he intended to comply with all laws and Senate rules. He never indicated to me any intention to do anything improper. On the contrary, in regard to his arrangement with his publisher, he assured me that he was proceeding in accordance with an FEC opinion and in accordance with his lawyers' advice. He believed the arrangement met all legal and ethical requirements.

Paul A. Magnuson
Paul A. Magnuson

STATE OF WYOMING)
)ss
COUNTY OF PARK)

The above and foregoing instrument was acknowledged before me this 12th day of June, 1990 by Paul A. Magnuson.

Witness my hand and official seal.

Joyce M. Shade
County of
Park
Notary Public
State of
Wyoming
My Commission Expires:
Mar. 30, 1994

Joyce M. Shade
Notary Public
My Commission expires March 30, 1994